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ABSTRACT

Under the principles of sovereign immunity, school districts have long enjoyed freedom from liability for torts. The current trend in many States is abrogation of immunity through court decision, legislative action, or school district policy. Some districts have purchased liability insurance to reduce economic loss. Appendixes present accident rates for various school activities, bodily injury insurance rates for each State, sections from several State statutes relevant to school district liability, a sample of bidding specifications for liability insurance, and a safety checklist. A 450-item bibliography presents relevant court cases that enable school superintendents or business officials to recognize the status of tort liability in their States, and to make proper decisions on bidding for tort liability insurance. (Appendix F, pages 208-208A, may be of poor quality when reproduced because of marginal legibility). (RA)

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TORT LIABILITY
IN THE 70's

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Most deeply and directly the author wishes to recognize the help of Delores, Marcia and Fritz Knaak whose patience, suggestions, and stimulus have greatly assisted the culmination of this work.

Preface

This manuscript was developed after the author had completed his Ph. D. thesis on the subject of school district tort immunity.

In the course of his research, two facts became very apparent to the author. The first, is that academic research completed in this area of school administration during recent years has remained just that. There has been little apparent dissemination of the information produced by the studies, and a minimum of relevant writing on the subject in professional periodicals.

The second fact is the nearly complete absence of "hard data" on the subject of school district tort liability. There has been some discussion about the "trend" away from immunity, and a viewing with alarm about the possible horrendous costs involved. However, solid analysis of the actual practical costs of tort liability to school districts has been notably absent.

This publication is an attempt to present the "hard facts" about tort liability in a working manual form that will be usable to superintendents, and to school business officials in decision making and in day to day operation. It may also have some value to school attorneys as a reference to pertinent cases and facets of school district liability.

In so volatile a field as school tort liability, the possibility of misconstruction is everpresent, and obsolescence is nearly instant. Since it is the intent of the author to update and re-publish at required intervals, he would appreciate comments and corrections from any reader who feels he has a contribution to make.

St. Paul, Minnesota
July, 1969

William C. Knaak

TABLE OF CONTENTS

PAGE

ACKNOWLEDGMENTS i

LIST OF TABLES vi

CHAPTER

I. THE SIGNIFICANCE OF TORT LIABILITY 1

II. SCHOOL DISTRICT IMMUNITY IN THE UNITED STATES. 5

The History of School District Immunity in the United States 6

Recent Appellate Cases Upholding Immunity . . 9

States Whose School Districts Enjoy the Most Liability Protection 10

States with the Governmental--Proprietary Dilema 18

States with Permissive Special-Purpose Waiver of Immunity 19

States with Permissive General-Purpose Waiver of Immunity 23

States with General Complete or Controlled Abrogation 24

III. GOVERNMENTAL IMMUNITY IN MINNESOTA 45

IV. PROCEDURAL AND ORGANIZATIONAL SCHOOL DISTRICT POLICIES TO PREVENT ACCIDENTS AND MINIMIZE SCHOOL DISTRICT LIABILITY 68

CHAPTER PAGE

Defenses Against Negligence 68

The Nature of Negligence 77

Policies to Minimize Liability 86

V. GENERAL LIABILITY INSURANCE FOR SCHOOL DISTRICTS 93

Insurance Rates and Rate-Making 95

Characteristics of Minnesota School Districts Carrying General Liability Insurance . . . 108

Experience of Minnesota School Districts Carrying General Liability Insurance . . . 114

Experience of Selected Out-of-State School Districts Carrying General Liability Insurance 124

Summary of Chapter V 124

VI. COST IMPLICATIONS OF TORT LIABILITY TO SCHOOL DISTRICTS IN 1970 128

General Considerations. 128

Costs to Local School Districts 131

Costs to the State of Minnesota 133

VII. SUMMARY. 137

GLOSSARY OF COMMON LEGAL TERMS 138

BIBLIOGRAPHY 143

CHAPTER PAGE

APPENDIX A. Laws of Minnesota, 1963, Chapter 798 . 172

APPENDIX B. California Governmental Immunity Abrogation Law 179

APPENDIX C. Iowa School District Tort Immunity Abrogation Law 188

APPENDIX D. Oregon Tort Immunity Abrogation Law . 195

APPENDIX E. Utah Governmental Immunity Act 199

Appendix F. Accident Rates By School Grade As Provided By the National Safety Council 208

APPENDIX G. Safety Inspection Outline 210

APPENDIX H. Bodily Injury Insurance Rates By State and Area 217

Appendix I. Specifications for Bidding Combined Comprehensive Bodily Injury and Property Damage Insurance 228

TABLE PAGE

I. High and Low School District Liability Insurance Rates in all States 102

II. School District Property Damage Rates 104

III. Insurance Rates for Increased Limits of Liability 104

IV. Rate Changes in 0324 Insurance Rates for all States for the Years 1960-1968 106

V. Distribution in Decile Ranges of 104 School Districts Carrying General Liability Insurance as Compared to all Districts Maintaining Graded Elementary and Secondary Schools 110

VI. Distribution of 104 School Districts Carrying General Liability Insurance As Compared to all Districts Maintaining Graded Elementa and Secondary Schools on School Taxes on a $16,000 Residential Home 112

VII. Summary: Minnesota School Districts 116

VIII. Local School Liability Insurance Premium Calculation 132

IX. Basic Factored Rates for Minnesota Rate Areas. . 135

X. Computation of State Liability Insurance Costs, 1969-70 134

CHAPTER I

THE SIGNIFICANCE OF TORT LIABILITY

> The main organizational goal of the public schools in American society is to educate the young--to change them from illiterate to literate, from the economically dependent to one capable of entry into a labor market, and, even more broadly to socialize them into the various civic roles of man (335, p. 2).

Within the school organization, the child occupies a very special role as was aptly described by the New Jersey Supreme Court (413):

> It must be born in mind that the relationship between the child and school authorities is not a voluntary one, but is compelled by law. The child must attend school and is subject to school rules and disciplines. In turn, the school authorities are obligated to take reasonable precautions for his safety and well-being.

Each year a number of cases are brought by children and other persons seeking damages for alleged negligent acts of school districts, their officers, employees, or agents. The injured child, or plaintiff, is usually seeking monetary damages, and the legal actions brought are of a civil, or private nature. These lawsuits for alleged wrongful actions by the school district are called actions in tort, or, a violation of the duty owed to the plaintiff by the school district.

However, the plaintiff has a high probability of finding his case confounded in an abyss of legal complexity because "the rule is well established that school districts are not liable for the negligence of their officers, agents or servants while acting in a governmental capacity in the absence of a statute expressly imposing such liability" (88). This rule is sometimes referred to as the doctrine of non-liability of governmental bodies for their torts, or, governmental immunity from tort liability. Based on this law a board of education in many cases cannot compensate a person for injuries received as a result of school district negligence, even if the board wants to pay the damages.

The basic result is a conflict between the rights of the individual, who may be a pupil, school employee, or a person not connected with the school district, and the legal rights of the school district.

The case for the rights of the individual has been well stated and summarized by the Colorado Supreme Court(3):

> Our courts are to decide the rights of citizens whether it be between themselves or between them and the government. . . . The rights of a citizen remain the same whether they collide with an individual or the government, and judicial tribunals were wisely established to correct such matters . . .

The defense for governmental immunity is a threefold thrust. The first is the concept of "sovereign immunity." Blackstone wrote in 1765 the words perhaps most quoted in describing this concept (35), "The King can do no wrong, the King, moreover, is not only incapable of doing wrong, but even of thinking wrong; he can never mean to do an improper thing; in him is no folly or weakness." The United States Supreme Court described its concept of soverign immunity in a democracy in 1868 when it said (375):

> It is obvious that public service would be hindered, and the public safety endangered if the supreme authority could be subjected to suit at the instance of every citizen, and consequently controlled in the use and disposition of the means required for the proper disposition of government.

In a 1907 case, the United States Supreme Court added (210), "There can be no legal right as against the authority that makes the law on which the right depends."

The second major thrust in the defense of governmental immunity is "stare decisis." This is a legal term referring to a policy of following rules or principles laid down in previous court decisions. For example, in upholding governmental immunity in 1966, the Missouri Supreme Court said(381), "For more than a century the courts of Missouri have uniformly held generally that political subdivisions of the state are not subject to liability in suits for negligence . . . . We regard the rule in Missouri as fixed public policy . . "

The Kentucky Supreme Court also upheld immunity in 1967, and added (443), "The doctrine of sovereign immunity had acceptance in our system of jurisprudence before the adoption of our first constitution . . . ." These two decisions are continued reflections on an 1812 Massachusetts Supreme Court decision, in which the court gave as one of its reasons for immunity (277), " . . . there is a strong presumption that what has never been done cannot be done . . . ."

The third thrust supporting governmental immunity is the concept that the law provides no funds for the purpose of payment of claims by school districts. This concept holds that education funds are actually trust funds which can be expended for educational purposes only. An Indiana Supreme Court case provides typical remarks on this concept (132):

> School corporations . . . are involuntary corporations, organized, not for the purpose of profit or gain, but solely for the public benefit, and have only such limited powers as were deemed necessary for that purpose . . . . Besides, school corporations in this State have no fund out of which such damages can be paid, nor have they any power, express or implied, to raise a fund for that purpose,by taxation or otherwise. The law specifically states what taxes shall be levied for their benefit and how and for what the same shall be disbursed, and no provision is made for the payment of damages for personal injuries . . . .

There is a wide variation in the amount of deviation from the concept of governmental immunity among the various states. The result is that the typical school administrator, if cognizant of the issues, has very mixed feelings on the subject of school district tort immunity. On one hand, he respects and approves of the rights of individuals,especially children, to protection under our courts. On the other hand, he wishes to guard zealously the limited funds available for the operation of the schools and dislikes seeing any of these funds going into "non-educational" purposes.

The design of this book is intended to be of help to school superintendents, business officials, attorneys, and administrators-in-training in the following ways:

A. to comprehend the status of tort liability in his own state.

B. to be aware of the national trends away from tort immunity for school districts.

C. to know the claim experience of school districts that are operating without the benefit of immunity.

D. to learn how liability insurance rates are computed, and the application of the rates to his own school district.

E. to recognize the kind of school activities that generate the most liability claims.

F. to plan safety procedures that will minimize liability in his school district.

G. to utilize available defenses against claims, when the school district's negligence is an admitted fact.

H. to make proper decisions on the bidding of liability insurance.

CHAPTER II

SCHOOL DISTRICT IMMUNITY IN THE UNITED STATES

Because effective working knowledge requires an adequate background in the historical development of a subject, Section I of this chapter deals with the development and evaluation of tort immunity from its English common law beginnings to its adoption and interpretation in our country and through our courts. Emphasis has been placed on the association of tort immunity to school districts. However, since the courts have regularly considered school districts as governmental bodies, the tort liability history of school districts has been inexorably intertwined with that of other governmental subdivisions, and had to be considered accordingly.

Section II reviews recent appellate court cases upholding immunity and the rationale for the opinions expressed by the court.

In the following sections an attempt was made to rank the fifty states according to their present status of tort immunity, from least liable to most liable. This was a hazardous undertaking, at best, because tort law is very dynamic. Even as this study is published, updated through May, 1969, certain changes may be "in the making." To illustrate the problem, the Minnesota Law Review (96) listed four states in which immunity was guaranteed by the state constitution. These were Alabama, Arkansas, Illinois and West Virginia. Dr. Robert Schaerer, chairman of the Association of School Business Officials Insurance Management Committee, placed Alabama, Arkansas and West Virginia in the category he referred to as "Immunity Vigorously Maintained" (363). Of these four states listed by the two authors, only Alabama presently can guarantee immunity to its governmental bodies. Illinois has abrogated immunity; this action is discussed in Chapter VII. Arkansas has established a state claims commission for claims against the state, permits school districts to purchase liability insurance and, in the case of Parrish v. Pitts, Supreme Court of Arkansas (311) has abrogated immunity for its municipalities. West Virginia also permits school districts to purchase liability insurance and to waive immunity up to the amount of the insurance.

The classification process was further hampered by the fact that a number of states, including Arkansas, Michigan and Florida have waived immunity for one or more municipal bodies, though they have not included school districts. In classification for this book, only school districts were included. Even though on-going or subsequent events might make it obsolete, an analysis of the present situation was judged to be of sufficient interest and value to justify its inclusion.

Additional sections are organized as follows:

Section III	States Enjoying Most Liability Protection
Section IV	States with the Governmental--Proprietary Dilemma
Section V	States with Permissive Special-Purpose Waiver of Immunity
Section VI	States with Permissive General-Purpose Waiver of Immunity
Section VII	States with General Complete or Controlled Abrogation
Section VIII	Negligence and Its Defenses

I. THE HISTORY OF SCHOOL DISTRICT IMMUNITY IN THE UNITED STATES

"All of the paths leading to the origin of governmental tort immunity converge on Russell v. The Men of Devon, 100 Eng. Rep. 359, 2 T.R. 667 (1788)," quoted the Minnesota Supreme Court in its discussion of the Spanel case, which retrospectively abrogated governmental immunity in Minnesota (387). "This product of the English common law," the court continued, "was left on our doorstep to become the putative ancester of a long line of American cases beginning with Mower v. Leicester, 9 Mass. 247 (1812)." Russell sued all of the male inhabintants of the County of Devon for damages occurring to his wagon by reason of a bridge being out of repair. It was apparently undisputed that the county had a duty to maintain such structures. The court held that the action could not be awarded damages because:

A. to permit it would lead to "an infinity of actions,"
B. there was no precedent for attempting such a suit,
C. only the legislature should impose liability of this kind,
D. even if defendants are to be considered a corporation or quasi-coroporation, there is no fund out of which to satisfy the claim,
E. neither law nor reason supports the action,
F. there is a strong presumption that what has never been done cannot be done, and
G. although there is a legal principle which permits a remedy for every injury resulting from the neglect of another, a more applicable principle is "that it is better than an individual should sustain an injury than that the public should suffer an inconvenience."

Tort immunity in case law came to the United States in 1812 when Mower's horse stepped in a hole and was killed. The plaintiff argued that "Men of Devon" should not apply since the town of Leicester was incorporated and had a treasury out of which to satisfy the judgment. However the Massachusetts court granted immunity, holding that the town had no notice of the defect and that quasi-corporations are not liable for such neglect under the common law (277).

The Wisconsin Supreme Court, in tracing immunity in its abrogation case (188) also cited "Men of Devon" and "Mower v. Leicester" as the origin cases for governmental immunity in this country. Professor Borchard was quoted on the Mower case, in part, as follows:

> . . . in the Mower case the county of Leicester was incorporated and could have made restitution out of its corporate funds, whereas an argument presented in the Russell case was that because the county was unincorporated there was no fund with which to pay a claim. Assuming then, that "the real reason for the exception (governmental immunity from suit) was doubtless the desire to escape financial obligations, . . . how immunity ever came to be applied in the United States is one of the mysteries of legal evolution.

None of the three previous cases referred to the "King can do no wrong" concept. This concept, as stated on p.2, came from Blackstone, who wrote in 1765 the much quoted words (35), "The King can do no wrong, The King moreover, is not only incapable of doing wrong, but even of thinking wrong; he can never mean to do an improper thing; in him there is no folly or weakness." Blackstone may have been in luenced by a judgment of the king's court in 1234 which proclaimed (323), "Our lord the king can not be summoned or receive a command from anyone."

At any rate, the Mower case was probably "in tune" with the times at that date because (96):

> Although notions of monarchy are inconsistent with our form of government, the English colonists had accepted as axiomatic the principal that the states were immune from legal action by their citizens. While the constitution was before the states for ratification, objection was made that the clause providing that the judicial power of the United States should extend to controversies 'between a state and citizens of another state' would subject the states to suit by their creditors. This was considered particularly obnoxious in view of the debts of the states to British subjects, which the states had no intention of paying.

Alexander Hamilton refuted this objection, saying, (96) "It is inherent in the nature of sovereignty not to be amendable to the suit of an individual without its consent." In 1793, the U. S. Supreme Court did, in fact, hold that a state could be sued by a citizen of another state (75). There was vigorous objection from the states, and an amendment was immediately introduced in Congress which was ratified. This became the eleventh amendment which contains a provision that judicial power shall not extend to any action against one of the states by citizens of another state.

In Hans v. Louisiana (179), the U.S. Supreme Court extended the immunity to suits against the state by their own citizens. This completely abolished from federal court jurisdiction any actions against the states by their citizens when the state had not consented to the suit.

In 1907, Justice Holmes commented (210), "There can be no legal right as against the authority that makes the law on which the right depends."

Thus, governmental immunity became thoroughly imbued in the code of laws at the federal and state level. How the doctrine infiltrated into the law controlling the liability of local governmental units represents a saga of legal history in every one of our United States. After studying the tracings of immunity history described in the abrogation cases of several states, it appears that the state history of immunity in Minnesota described in Chapter IV, is fairly typical. The progression of the immunity doctrine into school districts and local governments has been described as "one of the amazing chapters of American common-law jurisprudence" (168).

In recent years, acceptance and respect for "sovereign" immunity has diminished. "The king can do no wrong" concept has been supported by virtually no one and has become a rallying point for the vigorous opponents of governmental immunity. State courts considering governmental immunity have responded by either abrogating immunity or by citing other reasons for its continuance. These reasons have been described in Section II of this chapter which describes recent cases in which immunity has been upheld. Legislatures have also been active on the subject. "Regardless of constitutional provision, virtually all states have found some means to insure governmental responsibility when desired, and disagreement lies only in the method to be used" (96).

II. RECENT APPELLATE CASES UPHOLDING IMMUNITY

In 1957, the Florida Supreme Court abrogated immunity for municipal corporations in allowing a claim for the death of a prisoner in the town jail resulting from the negligence of a policeman (181). However, two decisions immediately thereafter firmly retained immunity for the county school boards. In the case of Richter v. Board of Education of Dade County 91 So. 2d 794 (343) the court cited Bragg v. Duvall County, 160 Fla., 590, 36 So. 2d 222 (1948) in which the court said:

> The law may impose liability for tort on Boards of Public Instruction but the prevailing rule in this country is that they are not so liable unless made so

> by law . . . . The mere fact that the Board of Public Instruction is created as a body corporate with power to sue does not affect its immunity from tort . . . . Whether the duties of Boards of Public Instruction are governmental or proprietary is not necessary to decide. They are limited strictly to the conduct of the public schools and are required to use such funds as they have for that purpose and no other. It may be that in the years ahead the policy of spreading the damages occasioned by accidents of this kind will be approved and that society in this or some other way will be required to help bear the burden, but this is a legislative field that the courts are not permitted to enter.

Subsequently, in 1959, when a woman was injured in a school stadium, the Florida court reaffirmed immunity, and added (60), "Rule of immunity from liability is based equally upon doctrine of sovereignty and prohibitory provisions of the state constitution, and it matters not whether the negligent act is committed while in performance of governmental or proprietary function."

The Supreme Court of Missouri in 1966 refused to abrogate immunity in the case of a wrestling accident and commented (381):

> We are inclined to agree with the statements made by the Supreme Court of Colorado in Tesone v. Sch. Dist. No. RE-2 384 P 2d 82 (1963) when it said, 'We have held repeatedly that if liability is to arise against a governmental agency for the negligent acts of its servants engaged in a governmental function, this liability, heretofore unknown to the law of the state must be a creation of the legislative branch of the government. I repeat again it is not the function of the judiciary to create confusion and instability in well settled law, nor is it within the province of judges to refuse to apply firmly established principles of law simply because those rules do not conform to the individual judge's philosophical notions as to what the law should be . . . courts are not arbiters of public policy.'

> When successive legislative sessions come and go without amending or doing away with the rule; when hundreds of county commissioners through their organization resist a change, when the work of countless members of the boards of school districts would be directly affected by a change in the law which would operate retrospectively; when the heavy majority of such board members and many of their constituants are opposed to repudiation of the rule on well-grounded concepts of public policy; how can it be said with certainty that the rule is so manifestly unjust, or that it is such an anachronism that the judiciary should usurp legislative powers and do away with it.

In 1966, a Georgia school district had told football players it had enough insurance to cover injuries from accidents. In fact, it did not. The father's additional claim on behalf of his son was rejected by the Georgia Supreme Court on the basis of immunity (429).

In 1965, the North Dakota Supreme Court upheld governmental immunity with the explanation (119):

> . . . the strongest argument for governmental immunity is that the Legislature of this State, as recently as the 1965 session has recognized the doctrine. . . . provides for motor vehicle liability insurance for the state and its municipal subdivisions. After providing for such insurance,the Legislative Assembly further said, 'This section shall not deprive any political subdivisions of the state of its right to claim governmental immunity or immunity of any employee,but such immunity shall not be available to the insurance carrier furnishing such insurance.' . . . If the rule is wrong, the Legislature has the power to change it. It is the duty of the courts to enforce the law as it exists.

The Kentucky Court of Appeals, in 1967, heard the case of a boy who ran off the tennis courts and stepped in a hole, and said (94), "Until the Legislature sees fit to waive immunity for public agencies other than those directly administered by the central state government, then such immunity will continue for all such public agencies performing a governmental function of the sovereign."

In an opinion delivered January 26, 1968, in a case involving assault and battery allegedly committed by a teacher against a pupil, the Kentucky court again upheld immunity of the school board (68).

The Iowa Supreme Court upheld immunity in 1966 and referred the matter to the legislature saying (167):

> . . . whether or not the state or any of its political subdivisions or governmental agencies are to be immune from liability for torts is largely a matter of public policy. The legislature, not the courts, ordinarily determines public policy. . . . we are fully aware of the trend away from governmental immunity. Consideration of the problems of legislative v. judicial abrogation of the rule including the precedents plaintiff cites to us leaves us satisfied that abrogation of the doctrine should come from the legislature, not judicial action.

The Iowa legislature did act to abrogate immunity in 1967.

The Pennsylvania appellate courts hear many cases regarding tort immunity due, in part, to the uncertain relationship in that state between governmental and proprietary functions. Their response in Dillon v. York City School District 220 A 2d 896 (104) in which they cited Supler v. North Franklin Twp. School Dist. 182 A 2d 535, (399) is typical of the firm position taken by a majority of the court:

> If it is to be the policy of the law that the Commonwealth or any of its instrumentalities or any political subdivisions are to be subject to liability for the torts committed by their officers or employees while engaged in a government function, the change whould be made by the Legislature, and not by the courts.

The Pennsylvania case of Husser v. School District of Pittsburth 228 A 2d 910 (195) merely affirmed "Dillon", but produced the following interesting response from Justice Musmanno, a regular dissenter in all of the immunity cases:

> If the defendent school district had permitted a Bengal tiger to roam the school yard of the Schenley High School and the minor plaintiff, Louis Husser Jr. had been mangled by that savage beast, I cannot believe that a majority of this court would say that the defendent would not be guilty of neglect in allowing such a peril to life and limb to exist. The responsibility of holding in leash a raging mob of juvenile delinquents intent on ruinous mischief cannot be less.

The South Dakota Supreme Court acted in 1966 to uphold immunity in the case of Conway v. Humbert, 145 N.W. (2d) 524 and reacted more traditionally than any of the other courts in recent immunity cases cited (86), "The purpose and the sole purpose of government in this state is to carry out the powers and perform the function entrusted to it by the people of the state . . . . . there can be no difference between what might be termed sovereign and non-sovereign capacity of the state." However, Judge Homeyer felt it necessary to write a special concurrence in which he stated:

> . . . agree that the legislature, because of flexibility, is better equipped to cope with the problem. However, I do feel that the judicial branch has a responsibility in this area and should remain cognizant. Courts should not irrevocably place corrective responsibility upon a legislature for a situation they have created. . . . so far as I have been able to determine, neither the legislature nor its research committee has given the matter the serious attention it merits, or attempted a solution. The federal government and many states have, some with judicial prodding and others without it. I would defer to the legislature further opportunity to act. If they fail to act, I feel the whole problem should be reconsidered by the court.

A 1966 Texas Court of Civil Appeals heard their state's immunity challenged on the basis of the state "right to work" laws (357). The plaintiff cited state law (Art. 5154c and Art. 5207a) "It is declared to be the public policy of the State of Texas that no person shall be denied public employment by reason of membership or non-membership in a labor organization." (The plaintiff claimed she had been fired for union activity.) The court said, "There is nothing in the

. . . Article that would indicate the intention of the legislature was to destroy governmental immunity of school districts and allow them to be sued for damage in tort."

The Ohio immunity doctrine was challenged in the federal courts on the basis of its alleged violation of the Civil Rights Act. The U.S. District Court of Appeals held (88) that "Ohio's doctrine of sovereign immunity has not been abrogated by the Civil Rights Act." The plaintiff also urged action on the basis of abrogation of immunity by other states; the court replied, "Appellant urges that we here apply the will of those states which have cast out the sovereign immunity doctrine. It will be for Ohio to determine whether it desires to do so."

In Vendrell v. School District 226 (421) the Oregon Supreme Court allowed immunity to a school district under complicated circumstances. Oregon's constitution forbids suits against the State (which the court interpreted to include school districts, as political subdivisions) except insofar as "Provision may be made by general law for bringing suit against the State." Oregon Revised Statutes 30.310 provided that an action may be maintained against a school district "for an injury to the rights of the plaintiff arising from some act or omission." The court said however, " . . our cases have interpreted the statute to permit recovery only when the governmental unit is acting in its proprietary as distinguished from its governmental capacity . . we think that it (the legislature) considered the doctrine of immunity as a whole, at least as it is related to school districts, and elected to lift immunity only to the extent of the insurance actually purchased . . . If the legislature had intended that the school district's immunity from tort liability was to be abrogated, it would seem that the statute would have been so drafted to expressly provide" (105)

The Oregon legislature did subsequently pass a law providing controlled abrogation on immunity for governmental subdivisions; this law is described in Section VII of this chapter.

The state of Washington is unique in that governmental subdivisions have been liable for their torts since a state law was passed in 1869 (428). However, in 1917, the state legislature restored immunity for any liability incurred because of "park, playground, or field house athletic apparatus or appliance, or manual training equipment . ." Subsequently the state abrogated its own immunity, and a 1966 case attempted to relate that abrogation to the previously named exceptions of school districts. The court held in Tardiff v. Shoreline School District (403) that "Waiving state's immunity is not repugnant to or inconsistent with statutory immunity afforded school districts."

The Court of Appeals of Kentucky upheld immunity for school districts in 1967 in the case of Wood v. Board of Ed. of Danville 412 SW 2d 877. The court said (443), " . . The doctrine of sovereign immunity had acceptance in our system of jurisprudence before the adoption of our first constitution . . . it was not intended that those sections should impinge on the rights of the Commonwealth by its General Assembly to direct in what manner and in what courts suits may be brought against it.

Utah upheld immunity in two recent cases, Cobra v. Ray City 366 P 2d 986 (82) and Campbell v. Pack, (66), as did North Carolina in Fields v. Durham City Bd. of Ed. (121) and in Huff v. Northhampton City Bd. of Ed. (194). Similarly, Wyoming upheld immunity in Muffer v. Incorp.Town of Kremmerer (278). Utah subsequently passed a law waiving most of its immunity.

Two factors seem to stand out in the recent cases in which immunity has been upheld. The first is the relative absence of some of the phraseology that was prevalent in tort immunity cases prior to the middle of the twentieth century such as, "school corporations have no fund out of which such damages can be paid," " . . purely a public duty and exempt from corporate liability for faulty construction, want of repair or the torts of its servants employed therein," " . . not the intent or policy to take the fund intended for the education of the young and apply it to payment for any malicious act of its officers. ." and, "no legal right against the authority that makes the law on which the right depends" (132).

The second factor is the absence of any truly ringing defense of governmental immunity. Rather, the main thrust of the argument for continuing immunity seems to be stare decisis, that is, in essence, "Good or bad, governmental immunity has been around and has been accepted by the legislatures for a long time. Governmental subdivisions and their elected boards rely on it, and if there is going to be a change, it should come from the legislature, not the court." Most of the cases mentioned had recourse to the legislature if there was to be a change, and some gave a clear suggestion that a change was desirable.

III. STATES WHOSE SCHOOL DISTRICTS ENJOY THE MOST LIABILITY PROTECTION

As indicated on page nine, nearly all states have managed to circumvent immunity when they so desired, and they have used a variety of methods to accomplish their purpose. No state was identified in which absolutely no claims were being paid by the state or its subdivisions. However, the two states where it appeared to be most difficult to pursue a disputed claim against a school district at this time were Alabama and Florida.

Section 14 of the Alabama Constitution of 1901 provides "that the State of Alabama shall never be made a defendant in any court of law or equity" (5). This has been interpreted to inlude school districts, and there is no differentiation made between governmental and proprietary torts committed. Alabama relents on immunity only to the extent that a claim may be filed against a municipality if the condition which resulted in a tort "existed for an unreasonable length of time." A claims commission consisting of the treasurer, secretary of state and director of finance hears claims against the state and makes recommendations to the legislature regarding payment.

After having abrogated immunity for its municipalities, the Florida District Court of Appeals held in Buck v.McClean, (60) that "Rule of immunity from liability of the county boards of public instruction is based equally upon the doctrine of sovereignty and prohibitory provisions of the state constitution, and it matters not whether the negligent act is committed while in performance of a governmental or proprietary function." No provision is made for insurance, and recovery from the legislature, if permitted, may be subject to taxpayer suit.

In the very recent case of Bonvento v. Board of Public Instruction (43), the Florida legislature provided that a sum of $50,000 be "appropriated out of the funds in Palm Beach county board of public instruction to be paid to Vincent Bonvento, a minor, "as compensation for his fractured spine and permanent paralysis . . . ." The boy had been injured when a "human pyramid," formed under the supervision of a teacher in a physical education class, collapsed. In this test case, the lower court held the action to be unconstitutional, since it violated Sec. 13, Article XII of the state constitution which forbids the legislature's diverting or appropriating any part of the permanent or available school funds for other than school purposes.

In a four-to-three decision, the supreme court overruled, and the majority said:

> We have held that the acts of the legislature carry such a strong presumption of validity that they should be held constitutional if there is any reasonable theory to that end . . . In their argument, the appellants pose the rhetorical question whether or not there could be any doubt that had a piece of furniture or equipment been damaged when the pyramid collapsed the repair of it could have been made from school funds. We conclude that the answer would obviously be in the affirmative. And we add our own question, if the school funds may be used to repair a broken piece of furniture or equipment, why not a broken human body?

Justice Drew, in dissent, stated that he felt the legislature acted "clearly beyond its power." He added:

> Recognizing the immunity of the State from liability in tort actions and recognizing that such immunity may be waived (by the legislature) only by general law which would operate uniformly throughout the State, I do not understand upon what theory the Legislature may single out individuals as beneficiaries of gifts for compensation by the State.

It should be pointed out that school districts listed in section VI, when being sued for torts committed in a governmental function are equally invulnerable for claim action. Also, school districts in Sections V and VI, who do not carry the permissible insurance, and who are being sued for torts committed in a governmental function are immune. However, plaintiffs in school districts in states listed in Sections IV, V, and VI of this chapter in general, have more opportunities to appeal to the legislature for a gratuitous settlement than Florida or Alabama, because their governmental immunity is not tied to their constitution.

IV. STATES WITH THE GOVERNMENTAL-PROPRIETARY DILEMA

In general, the constitutions and legislatures of the states in this section have been largely silent on the subject of governmental immunity, and the common, or case law prevails.

This is one of the areas of the most trauma and devastation for school districts in the entire scope of tort liability because, first, the guidelines for delineating between the two classes of functions are hopelessly conflicting, and secondly, because in most of these states, reasonable maximum awards and orderly procedures for the filing of claims have not been established.

One of the most descriptive tests of governmental vs. proprietary functions was applied in City of Wooster v. Arbenz, (446): "Was it a duty imposed upon the municipality as an obligation of sovereignty" (governmental), or, " was it an action taken for the comfort and convenience of its citizens" (proprietary)? Other tests have been applied with varying and confusing results. For example:

Busing for the summer recreation program conducted by the school district for a fee was held not governmental because the state statutes did not require the district to conduct such a program (273).

The summer playground, even during the summer months, was governmental (372).

A boy killed while operating a lathe was ruled governmental on the basis that the shop instruction was governmental. The fact that he was making a stool for the private use of another teacher was not relevant (186).

The gathering of school trash by the janitor is governmental (303).

A wrongful failure to issue a work permit is governmental (261).

Maintenance of school sidewalks is governmental (329).

Maintaining school buildings for public meetings is governmental (212).

Injury sustained by a boy injured in the gym during the noon hour was governmental (95).

Playgrounds are governmental when the statute permits their use for recreation purposes (256).

The sale of land, and statements about the quality of fill contained thereon was proprietary (227).

A basketball thrown too hard by a gym instructor was governmental (320).

A negligently installed heating system was not governmental (53), nor was in improperly installed cesspool (54).

Springborg (389) found the most governmental-proprietary conflict among the municipalities. He reported that in Russ v. City of Cleveland, 28 Ohio C.A. 25 (1917) garbage collection was a proprietary function, while in Broughten v. City of Cleveland, 167 Ohio St. 29, 146 N.E. 2d 301 (1957) it was governmental. A public park is governmental in New York (Willcox v. Erie County, 297 N.Y.C. 287 (1937)and proprietary in Indiana (City of Kokomo v. Loy, 112 N.E. 994 (1916)): a county fair charging no admission is a governmental function in Idaho (Peterson v. Bannock County, 102 P (2d)647(1940), but proprietary in California (Litzman v. Humboldt, 273 P(2d) (1954)).

The courts have repeatedly expressed frustration over the obvious conflicts of this dilema. The United States Supreme Court said in Brush v. Commissioner 300 U.S. 352, 362, (1937). . . There probably is no topic of the law in respect of which the decisions of the state courts are in greater conflict and confusion than that which deals with the differentiation between the governmental and corporate powers. . . ." In 1955 a majority of five justices spoke of the "non-governmental-governmental quagmire that has long plagued the law of municipal corporations" (198). The Pennsylvania court said (255), "Perhaps there is no issue know to law which is surrounded by more confusion than the question whether a given municipal operation is governmental or proprietary in nature."

As was evident from the previous citations, courts, more often than not, find school district activities to be governmental. Some courts have taken the position that school districts are created to operate schools; that this is a governmental function; that while acting within their scope of authority, they cannot engage in a proprietary function; that in legal contemplation there is no such thing as a school board acting in a proprietary capacity for private gain (343).

Nevertheless, some courts do find some school activities to be proprietary, and this leaves school districts in these states in a very awkward position. Since their law has not specifically permitted liability insurance, the carrying of this insurance is, in some of the states, ultra vires. It should be noted, however, that many school districts in these states do carry liability insurance for protection against proprietary activities claims. Wood (444) found that seventy-five percent of Michigan schools carry liability insurance. When they do, their immunity for governmental functions is apparently not impaired (10, 104, 256, 399). If a negligence incident does occur, there are no time or money limitations on the suit, nor any well-ordered procedures for processing the claim.

States included in the "governmental-proprietary" dilema category are: Alaska, Colorado, Delaware, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Nebraska, New Hampshire, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, and West Virginia.

School districts located in the states identified in Sections V and VI of this chapter who elect not to carry general liability insurance could also fall into the category of states with the governmental-proprietary dilema.

In all, or nearly all of these states, some type of special provision is made for paying claims against the state or other governmental units outside the jurisprudence of the courts. These provisions usually take one of the following forms:

A. Gratuitous payment by the legislature on the basis of a bill being introduced to appropriate funds for that purpose;
B. Review of claim by claims commission with authority only to recommend appropriation by the legislature when it meets. The commission may be made up of legislators or elected officials, such as treasurer, secretary of state, etc. Sometimes it is given authority to settle minor claims, such as claims under $200 (338);
C. A number of states provide for adjudication by administrative boards, a majority of which are of the ex-officio type including such state officers as the governor, secretary of state, treasurer, director of finance. These boards have authority to act on claims up to a somewhat larger amount out of funds appropriated by the legislature for that purpose.

The first two procedures are included in some detail as they related to the particular State of Minnesota in Chapter III, pp. 55-58. The criticism leveled at these procedures would be applicable to most states, although in Minnesota municipalities and counties have recently been made liable for their torts. In general, the main complaint is not that claims are not being paid, but that they are being processed haphazardly and adjudicated by persons not at all learned in the law of tort and negligence.

The third procedure has some advantages over the first two in that it tends to:

A. Operate on a relatively continuous basis and speed claim payment;
B. Allow more time to investigate claims than is available to a legislative committee;
C. Provide more consistency and uniformity in the handling of claims since one body is processing all claims

This procedure also has some very real disadvantages, and legal experts have been critical. According to Nutting (302), some of the disadvantages are:

A. State officials are not using their time and talents in areas where they are most qualified;
B. State officials often lact training and experience for this duty;
C. State officials usually lack time and are unable to give the claim investigation the consideration it deserves.

Another view of the third claim procedure was given by MacDonald who said (245), "one of the most ineffective devices yet conceived for the performance of administrative duties is the ex-officio board."

Michigan replaced their ex-officio board with a judicial court of claims in 1939. Judge Moynihan explained (338), "As the scope of government searched further into the livelihood and lives of our citizens many claims arose against the state, and the investigation, factual and legal review, and determination, impeded the functions of the state officers. Efficient government demanded that the determination of claims be made by persons especially qualified by training and experience."

V. STATES WITH PERMISSIVE SPECIAL-PURPOSE

The states identified in this section have taken one or more steps away from immunity on behalf of their school districts. This means that for a special liability exposure, usually transportation and motor vehicle hazards, the legislature has given them express permission to purchase liability insurance and permitted them to waive their immunity up to the amount of the insurance. The states and the waiver areas are as follows:

Kansas: Waives immunity up to amount of insurance purchases for liability incurred by negligent operation of motor bicycles by officer or employee

Mississippi:	Requires school district to pay $10 per bus per year into a state fund, from which claims not to exceed $5,000 per person or $50,000 per accident are paid.
Maine:	Waives immunity not to exceed limits of coverage of the policy for liability incurred by negligent operation of a motor vehicle.
Tennessee:	Requires purchase of school bus insurance and waives immunity up to amount of same.

VI. STATES WITH PERMISSIVE GENERAL-PURPOSE WAIVER OF IMMUNITY

States identified in this section have gone a step further than those in Section V, in that they have permitted their school districts to purchase general liability insurance and waive immunity up to the amount of the insurance. These states, and their limitations, if any are:

Arkansas:	Constitutional provision against liability avoided by making the insurer, rather than the school district, liable.
Indiana:	Immunity waived up to the amount of insurance.
Idaho:	Immunity waived up to the amount of insurance.
Montana:	Immunity waived up to the amount of insurance.
New Mexico:	Immunity waived up to the amount of insurance.
North Carolina:	School bus claims exempted from insurance and paid from a state school bus fund. Claims against schools heard by the North Carolina Industrial Commission.
Vermont:	General liability insurance required, school bus liability insurance required.
Wyoming:	Immunity waived up to the amount of insurance.

In states permitting the purchase of general liability insurance by school districts, the courts, in general have held that (A) School districts that do not purchase such insurance have not had their immunity for governmental functions waived (104), and, (B) School districts that purchase such insurance do not waive immunity in excess of their insurance (421).

VII. STATES WITH GENERAL COMPLETE OR CONTROLLED ABROGATION

In Section III of this chapter, it was indicated that there is no such thing as complete immunity. Similarly, there is no such thing as complete abrogation of immunity. Of the states considered, New York is probably the nearest to complete abrogation, and Utah probably the furthest away. In fact, Utah does not claim to have abrogated immunity at all, but merely to have waived immunity in a long list of circumstances.

No attempt was made to discuss these abrogations sequentially or chronologically because they constitute an evolutionary process involving appellate court decisions, legislative action, and subsequent court decisions clarifying previous decisions. For example, in 1957 the Supreme Court of Colorado "abrogated" immunity for that state in the case of Colorado Racing Comm. v. Brush Racing Association (83), and coined a phrase used widely in governmental immunity cases, "In Colorado 'sovereign immunity' may be a proper subject for discussion by students of mythology but finds no haven or refuge in this court." Yet, three years later, in Liber v. Flor, (234), the Colorado court invoked governmental immunity on behalf of a county government (and apparently school districts). Therefore, rather than attempting to "trace" events from one state to another, all states were considered alphabetically, following the pattern of the four previous sections.

Arizona. The Supreme Court of Arizona abrogated immunity for that state in the case of Stone v. The Arizona Highway Commission (396). The court referred to Professor Borchard's (44) discussion on the history and theory of tort immunity. They considered the "men of Devon" and "Mower" cases, and observed, "This doctrine of the English common law seems to have been windblown across the Atlantic as were the Pilgrims on the Mayflower and landed as if by chance on Plymouth Rock,for the first American case arose in Massachusetts.Mower v. Leicester,9 Mass. 247 (1812)."They then traced the experiences of abrogation through Colorado, Florida, Michigan, Illinois, Wisconsin, Minnesota and California, and, "After considering all the facets of the problem we feel that the reasoning used by the California Court in Muskopf v. Coringi Hospital District, supra, has more validity and therefore we adopt it."

The state legislature of Arizona subsequently passed Arizona Revised Statutes 12-821 through 12-826 describing procedures for filing actions against the state.

California. The Supreme Court of California abrogated immunity for that state in Muskopf v. Corning Hospital District (279). The court traced sovereign immunity through "Men of Devon" and "Mower", referred to the doctrine as "an anarchronosm without rational basis," declared that it "existed only by force of inertia," and concluded, "Its requiem has long been overshadowed."

The California legislature promptly passed a law continuing immunity for two years and assigned a Law Revision Commission and a special legislative committee to make recommendations to the legislature (63). The 1963 legislature then passed two bills which provided for orderly claim procedures and limitations. These bills are now encompassed in California Government Code, sections 810 through 996.6, and are found in Appendix B of this book.

The California procedural laws have withstood attack very well. The following restrictive clauses have been confirmed by court action (350).

> Where the claim for damages was rejected by operation of law of June 28, 1965, a suit which was not filed until January 3 of the following year was barred by the six-month statute of limitations. The court also ruled that although not specified in the law, the 6-month limitation also applied to starting the suit against the public employee.
>
> In view of the liability of the public entity for negligence of its employees,it was not unreasonable to set up claims procedures providing that the statute of limitations for suits against employees coincide with the period for suits against the employing public entity, and a six months limitations period applicable to suits against such employees was not unconstitutional on the theory that such classification was unreasonable.

Connecticut. The official position of the state of Connecticut is that it observes the governmental immunity doctrine except where expressly removed by statute. The exceptions, however, are impressive. Section 10-235 of the Connecticut statutes reads as follows:

> Protection of teachers , employees and board and commission members in damage suits. Each board of education shall protect and save harmless any member of such board or any teacher or other employee thereof or any member of its supervisory or administrative staff, and the state board of education, the commission for higher education, the board of trustees of each state institution, and each state agency which employs any teacher, and the managing board of any public school, as defined in section 10-161, shall protect and save harmless any member of such board or commission, or any teacher or other staff employee thereof or any member of its supervisory or administrative staff employed by it, from financial loss or expense, including legal fees and costs if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act resulting in accidental bodily injury to or death of any person, or in accidental damage to or destruction of property, within or without the school building, provided such teacher, member or employee, at the time of the accident resulting in such injury, damage or destruction, was acting in the discharge of his duties within the scope of his employment or under the direction of such board of education, the commission for higher education, board of trustees, state agency, department or managing board. For the purposes of this section, the term teacher shall include any student teacher doing practice teaching under the direction of a teacher employed by a town board of education or by the state board of education or commission for higher education.

Section 10-236 allows purchase of liability insurance to cover the exposure; Section 52-557 waives school district immunity for school bus accidents.

It is difficult to envision many acts, tort or negligence, that could be committed by a school district that could not be related in some meaningful way to a school employee, officer, or board member. Dr. Schaerer (363) included Connecticut in his group entitled "Immunity Waived" and the same position is taken here. It is true that the state of Connecticut will "save harmless" an employee only if the alleged tort is committed "within the scope of his employment," but most of the states which have abrogated immunity, including California and New York, have enacted laws removing the school district from liability if the tort is not in the scope of an employee's duties. A recent California case in which a school trustee was accused of making falacious public statements about a principal illustrates the point (237). The district was held not liable because it was a discretionary act outside the scope of the trustee's employment.

In a 1955 case the Superior Court of Connecticut, Litchfield County (400), held that a judgment must first be secured against the principal before the school district could be subject to action. The purpose of the statute was not to abolish immunity, but to indemnify school employees from loss.

The Supreme Court of Connecticut clarified the situation further in the 1967 case of Pastor v. City of Bridgeport (312) in holding that a school board may not use immunity as a defense against the save-harmless statute previously cited.

Realistically then, immunity has been effectively abrogated in this state without the advantage to the school district of having an abrogation law that defines orderly claim procedures and sets time and dollar limitations.

Hawaii. ACT 312, Sec. (245A-2), previously enacted by the legislature of the territory and not a part of the state statutes, reads as follows:

> Waiver and liability of Territory. The Territory hereby waives its immunity for liability for the torts of its employees, and shall be liable in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for

> interest prior to judgment or for punitive damages. If however, in any case wherein death was caused, the Territory shall be liable only for actual or compensatory damages measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was sought.

A recent amendment permits the attorney general of Hawaii to settle claims, with court approval, of less than $2,000.

Hawaii's governmental structure is more simplified than that of most other states in that the state actually operates the elementary and secondary schools, and the only chartered governmental unit other that the state is the City and County of Honolulu.

Illinois. The Illinois abrogation case and its discussion has been included in considerable detail in this book because it summarized so much of the thinking of legal scholars and courts that have been pressing toward removal of sovereign immunity.

The Illinois abrogation opinion(269), which concerned a child hurt in a school bus accident, collected most of the classic vehemence which has been hurled at the immunity doctrine over a period of time.

The court began with the terse observation that " . . . in 1898, eight years after the English courts had refused to apply the Russell doctrine to schools, the Illinois court extended the immunity rule to school districts in the leading case of Kinnare v. City of Chicago, 171 Ill. 332, 49 N.E. 536" (215).

Professor Borchard was quoted, "how immunity ever came to be applied in the United States is one of the mysteries of legal evolution" (Borchard, Governmental Liability in Tort, 34 Yale L. J. 1, 6), and Green, " . . . how immunity infiltrated into the law controlling the liability of local governments is one of the amazing chapters of American Common Law jurisprudence" Green, Freedom of Litigation, 38 Ill. l. Rev. 355, 356).

The Illinois court continued, "It seems however, a prostitution of the concept of sovereign immunity to extend its scope in this way for no one could seriously contend that local governmental units possess sovereign powers themselves" (54 Harv. L. Rev. 438, 439).

The court then embraced the descriptive language originating an Annotation, 75 A.L.R. 1196, and repeated by the New Mexico court in Barker v. City of Santa Fe, 47 N.M. 85, 88, 136 P (2d) 480, 482:

> The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociologiacl enlightenment, and in a republic, the medieval absolutism supposed to be implicit in the maxim, 'the king can do no wrong' should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community constituting the government, where it could be borne without hardship upon any individual, and where it justly belongs.

The court next dealt with the "no-funds," or "protection of public funds" theory of immunity and said:

> We do not believe that in this present day and age, when public education constitutes one of the biggest businesses in the country, that school immunity can be justified on the 'protection of public funds theory' . . . Logically, the 'no fund', or 'trust fund' theory is without merit because it is of value only after a determination of what is a proper school expenditure . . . . Many disagree with the 'no fund' doctrine to the extent that the payment of funds for judgments resulting from accidents or injuries in schools is an educational purpose. Nor can it be properly argued that as a result of the abandonment of the common-law rule, the district would be completely bankrupt. California, Tennessee, New York, and Washington have not been compelled to shut down their schools. (Rosenfeld, Governmental Immunity for Tort in School Accidents, 5 Legal Notes on Local Govt. 376-377).

and,

> . . . Private concerns have rarely been greatly embarassed, and in no instance, even where immunity is not recognized, has a municipality been seriously handicapped by tort liability . . . . Tort liability is, in fact, a very small item in the budget of any well-organized enterprise. (Green, Freedom of Litigation, 38 Ill. L. Rev. 355-378).

In speaking of the state school code which permits school districts to carry transportation liability insurance, the court observed:

> We interpret that section as expressing dissatisfaction with the court-created doctrine of governmental immunity, and an attempt to cut down that immunity where insurance is involved. The difficulty with this legislation is that it allows each school district to determine for itself, whether, and to what extent it will be financially responsible for the wrongs inflicted by it.
>
> A municipal corporation today is an active and virile creature capable of inflicting much harm. Its civil responsibility should be co-extensive. The municipal corporation looms up definitely and emphatically in our law and what is more, it can and does commit wrongs: This being so, it must assume the responsibilites of the position it occupies in society. (Harno, Tort Immunity of Municipal Corporations, 4 Ill. L. Q. 28, 42).
>
> The public school system in the United States which constitutes the largest single business in the country, is still under the domination of a legal principle which in great measure continued unchanged since the Middle Ages to the effect that a person has no financial recourse for injuries sustained as a result of the performance of the state's function.

In conclusion, the court considered the argument that if immunity was to be abolished, it should be done by the legislature:

> With this contention we must disagree. The doctrine of school district immunity was created by this court alone. Having found that doctrine to be unsound and unjust under present conditions we consider that we have not only the power, but the duty to abolish that immunity. 'We closed our courtroom doors without legislative help, and we can likewise open them.' (Pierce v. Yakima Valley Memorial Hospital Assn., 43 Wash 2d 260 P 2d 765,774).
>
> It should be borne in mind that we are not dealing with property law or other fields of law where stability and predictibility may be of utmost concern.We are dealing with the law of torts where there can be little if any, justifiable reliance,and where the rule of stare decisis is admittedly limited.
>
> Justice Davis, in dissent said:
>
> Dissent from decision which, in one fell swoop, severs from the body of Illinois law the ancient and established doctrine of governmental immunity from tort liability . . . We applied immunity to school district in 1898 in Kinnare v. City of Chicago on the ground that a school district is an agency of the state having existence for the sole purpose of performing certain duties deemed necessary to the maintenance of an efficient system of free schools, and like the state is exempt from tort liability to the same extent as the state itself, unless such liability is expressly provided by the statute creating such an agency.
>
> Justice Holmes,in his lecture entitled 'The Common Law' stated that 'The life of the law has not been logic. It has been experience.'

The Illinois legislature subsequently passed a tort liability law which established the procedures and limitations for tort claims against school districts. Unlike the California law , three parts of the Illinois law have been struck down by the courts because they violate Article IV of the state constitution which forbids the passing of laws "granting to any corporation or individual any special or exclusive privilege, immunity or franchise."

In the case of Lorton v. Brown County (240), the supreme court ruled the different time limitation for claim notice set for school districts unconstitutional. In Harvey v. Clyde Park District 32, it ruled that the exclusion of the park districts from the liability act was unconstiutional saying (184):

> If the child involved had been injured on a slide negligently maintained in a park by a city or village, there is no legislative impediment to full recovery, if the child had been injured on a slide negligently maintained by a school district or by the sovereign state, limited recovery is permitted.
>
> But if the child was injured on a slide negligently maintained by a forest preserve district or park district, recovery is barred In this pattern there is no discernable relationship to the realities of life.

Finally, in upholding a lower court' order for a school district to reimburse an employee for a judgment rendered against him according to a 1965 statute passed by the Illinois legislature, the court also declared the $10,000 limitation for school districts unconstitutional, referring to "Lorton" and "Harvey (416).

Iowa. In 1964, a 5-4 decision of the Iowa Supreme Court, Boyer v. Iowa High School Athletic Association, (51), upheld governmental immunity. The majority opinion was that the legislature should abrogate immunity, and the minority opinion was that the court should carry out the abrogation. In 1965 the legislature passed the Iowa State Tort Claims Act, patterned after the Federal Tort Claims Act.

Subsequently, in Graham v. Worthington (167) the court held that the Tort Claims Act was applicable only to the state government and not to the other governmental subdivisions.

In the 1967 legislature, another act, Senate File 710 was passed; it is recorded in Chapter 405 of the Acts of the 62nd General Session Book. This act waived immunity for cities, towns, counties, townships and school districts, and established procedures for filing of claims. Unlike many other tort liability acts, however, it did not contain any monetary limitations. A copy of this act is found in Appendix C.

Massachusetts. Chapter 41, Section 100A and 100C of the General Laws of Massachusetts provides that all teachers and school personnel shall be indemnified for torts committed within the scope of their employment. (Effective July 9, 1968) The implications of this type of abrogation have already been discussed with respect to Connecticut, p.27 this section.

Minnesota. Minnesota was selected by the author to use as an illustration of the progress from tort immunity for school districts to tort liability in a given state. Tort liability in Minnesota is discussed in detail in Chapter III. Specific discussion on the present state of liability in that state is found on pp. 65-66.

Nevada. Nevada waived governmental immunity for the state and its subdivisions with the passage of Nevada Revised Statutes Title 3, Chapter 41, section 41.031,effective July 1, 1965.

The Nevada law limits claims to not more than $25,000 per claimant, and the award may not include any exemplary or punitive damages, or interest prior to the judgment. The claim action must be initiated within six months of the occurrence. The state board of examiners or local governmental units may act on claims not exceeding $1,000.

No action may be based on: (1) an action or omission of an employee executing a regulation or statute with due care, (2) a failure to inspect a building or vehicle, or, (3) an employee's exercising or ommitting a discretionary function on the part of the state or its agency. An amendment to this act, effective May 1, 1968, provides that a claim may not be filed against an employee of the state or its subdivisions, as a result of his official activities, unless it is filed according to the prescribed laws of the state.

New Jersey. New Jersey Statutes 18A 16-6 (1968) read as follows:

> Whenever any civil action has been or shall be brought against any person holding any office, position or employment under the jurisdiction of the board of education, including any student teacher for any act or omission arising out of and in the course of the performance of the duties of such office, position, employment, or student teaching, and the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeals, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; and said board may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

The nature of exposure of the school district under this type of abrogation was discussed with respect to Connecticut, p. 26, this section.

This type of exposure seems to come nearest to the ultimate problem envisioned by the critics of liability, the problem of retaining sufficient funds to operate the schools.

New York. In 1929 the state of New York passed the Court of Claims Act of 1929, which waived the sovereign immunity of the state as follows (293):

> The state hereby waives its immunity from liability for the torts of its officers and employees and consents to have its liability for such torts determined in accordance with the same rules of law as apply to an action in the Supreme Court against an individual or corporation, and the state hereby assumes liability for such acts, and jurisdiction is hereby conferred on the Court of Claims to hear and determine all claims against the state to recover damages for injuries to property or for personal injury caused by the misfeasance or negligence of the officers or employees of the state while acting as such officers or employees.

This law did not include school districts and other subdivisions of the government until 1945 when in the case of Bernadine v. City of New York (31), the appellate court granted the plaintiff recovery for damages sustained from a runaway police horse. It was ironic that after one hundred and fifty years of the various courts pondering and writing about Russell's and Mower's horses, that another equine case should reverse the governmental immunity trend. The court went on to say:

> The legal irresponsibility heretofore enjoyed by these governmental units (counties, cities, towns and villages: was nothing more than an extension of the exemption from liability which the state possessed. On the waiver of the State of its own sovereign dispensation, that extension naturally was at an end thus we are brought all the way round to a point where the civil divisions of the state are answerable equally with individuals and private corporations for wrongs of officers and employees, even if no separate statute sanctions that enlarged liability in a given instance . . . .

The present New York Law, according to Smith (380 pp. 21-25) requires that "boards of education . . . shall save harmless from liability all employees of the district from judgments, suits or claims, arising from alleged negligence or other act, resulting in bodily injury."

New York law also permits school districts to insure pupils against injuries sustained in physical education classes, intramural and interscholastic sports, accidents to pupils occurring in school, on school grounds, or while being transported between home and school in a bus. This is purely accident insurance, rather than liability. Premiums are paid by the school district, and claims for accidents are paid without fault by the insurance company.

If a board of education chooses not to purchase pupil accident insurance, it may not administer a plan under which the parents pay the premiums for their children, this being regarded as an unlawful use of public property for the private use of the insurance companies (380 p. 33).

Oregon. In 1967, the Oregon legislature passed a "Tort Actions Against Public Bodies" abrogation of immunity law without the degree of judicial prodding that had been the circumstance in some of the other states described. The law, effective July 1, 1968, also set up claim procedures and established limits of $25,000 for property damage, $50,000 per individual for bodily injury,and $300,000 maximum per occurrence The law also provided for the proration of the awards if the total claims exceed $300,000. A copy of the act is included as Appendix D.

Utah. The "Utah Governmental Immunity Act" which became effective June 1, 1966 takes great pains to say that it is not abrogating immunity Section 63-30-3 states, "Except as may be otherwise provided in this act, all governmental entities shall be immune from suit for any injury which may result from the activities of said entities wherein said entity is engated in the exercise and discharge of a public function." Section 63-30-4 continues, "Nothing contained in this act, unless specifically provided, is to be construed as an admission or denial of liability or responsibility. . . . Wherein immunity from suit is waived by this act, consent to be sued is granted and liability of the entity shall be determined as if the entity were a private person." Sections 63-30-5 through 63-30-9 provide for waiver of immunity for actions on contracts, property, motor vehicles, highways, bridges etc., defective buildings or other public improvements. Then 63-30-10 calls for "waiver of immunity for injury caused by negligent act or omission of employee committed within the scope of his employment " Eleven exceptions are listed to this waiver of immunity for negligent acts, but they are not unlike the exceptions listed by states that have passed laws abrogating immunity. It is, in fact, more generous because no dollar recovery limits are established. Therefore it seemed reasonable to include Utah with the states that have, in one form or another, effectively abrogated immunity.

Washington. A Washington school district was held liable for its torts as early as 1907 (334). The supreme court based its ruling on an 1869 statute and quoted sections as follows:

> Section 5673, Ballinger's Ann. Codes and Statutes: An action at law may be maintained by any county, incorporated town, school district, or other public corporation of like character in this state, in its corporate name, and upon a cause of action accruing to it, in its corporate character. . . Section 5647 provides that: An action may be maintained against a county, or other of the public corporations mentioned or described in the preceding section, either upon a contract made by such county or other public corporation in its corporate capacity, and within the scope of its authority or for an injury to the rights of the plaintiff arising from such act or omission of such county or other public corporation.

In 1915, the court accordingly approved a jury award of $500 to a six-year-old child who had been injured in a fall from a horizontal ladder at school. To the defense of immunity from liability because of the school's functioning as a governmental agency, the court replied that the 1869 statute construed in the Redfield case had abrogated the common-law doctrine in Washington.

In 1917 the state legislature passed an act(Chapter 92, page 332, Laws of 1917) which was intended to limit school district liability in certain areas and read as follows:

> Section 1. No action shall be brought or maintained against any school district or its officers for any noncontractual acts or omissions of such district, its agents, officers, or employees, relating to any park, playground, or fieldhouse, athletic apparatus or appliance, or manual training equipment, whether situated in or about any schoolhouse or elsewhere, owned, operated, or maintained by such district.

There followed nearly a half century of litigation about the definition of "athletic apparatus or appliance" and the other "immune facilities" mentioned in the act.

The interpretation was never firmly settled and it became a matter for the court to settle in each instance.

However, the following was established:

Playground injuries were immune (213), (188), (127), and, (17).

A watertank removed from the school and placed on the playground was not playground apparatus, and damages were awarded to the pupil injured while playing thereon (394).

A school district was held liable for injuries to a football player during a game,the injuries being attributable to the negligence of the football coach in allowing him to play before he had recovered from previous injuries (274).

In 1933 the court apparently ignored the 1917 statute and held a school district liable for injuries to a high school pupil who list three fingers while operating a defective planer (49). In 1940, however, the court overruled the principle established in that decision (70).

A 1934 case (207) decided that football bleachers were not "athletic apparatus," and the school district could be held responsbile for failure to maintain them.

A child who fell froma horizontal bar was barred from recovery on the basis of the 1917 statute (61).

Recovery on behalf of a student who was killed while working on an allegedly defective manual training machine was prevented by the same statute (70) (overruled Bowman (49)).

A football was not athletic apparatus, and the school district was liable for injuries resulting from its use (55).

A backstop on the ballfield was an athletic appliance, and damages could not be recovered for its negligent maintenance (383).

In a split opinion in Barnecut v. Seattle School District No. 1, (23), the majority held that a baseball thrown by a member of a baseball team while warming up was not an applieance or apparatus. The dissenting judges protested that in the Snowden (383) case the court had said, " . . . the word 'appliance' is very broad and includes anything applied or used as a means to an end." In 1965 the court ruled in Rodriguez v. Seattle School District No. 1 (349), that whereas a tumbling accident did not relate to the tumbling mat, (appartus) the school was liable.

In 1961 the state legislature of Washington enacted Laws of 1961, chapter 136, 1 (codified as RCW 4.92.090) which reads as follows:

> The state of Washington, whether acting in its governmental or proprietary capacity,hereby consents to the maintaining of a suit or action against it for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation. . . .

In the 1964 case of Kelso v. City of Tacoma (214), the court abrogated immunity for municipalities as it had done for charitable organizations in Pierce v. Yakima Valley Memorial Hospital (321) in 1953. However, in 1966, in Tardiff v. Shoreline School District (403), the court held that the statute waiving its immunity from tort liability "was not repugnant to or inconsistent with the statutory immunity afforded the schools by the 1917 statute."

The legislature, meeting in 1967, then amended its civil procedure laws to include a section on actions against political subdivisions, municipal corporations and quasi-municipal corporations. (Chapter 4.96 1967) Thus ended the saga of the "athletic apparatus and appliance."

Wisconsin. The abrogation case of Holytz v. Milwaukee (188) in this state came about when a three and one-half year old girl, playing in a city "tot-lot" injured her hands. In this instance, a 50-pound steel trap door, negligently left open by a city employee, had fallen on the child.

The court traced the doctrine of immunity from "Men of Devon" in a manner similar to that previously described in Illinois (pp. 28-32). They also selected some additional quotations to describe the rationale for their decisions. The court said, "There are probably few tenets of American jurisprudence which have been so unanimously berated as the governmental-immunity doctrine. This court and the highest courts of numerous other states have been unusually articulate in castigating the existing rule; text writers and law reviews have joined in the chorus of denunciators. Some examples of the condemnation are here presented.

> The doctrine that immunity from liability should be granted to the state and municipalities while engaged in governmental operations rests upon a weak foundation. Its origin seems to be found in the ancient and fallacious notion that the king can do no wrong. (Britten v. Eau Claire, 51 N.W. (2d) 30)
>
> This court has long felt that the reasons for granting such immunity to charitable and religious organizations as well as to municipal corporations, are archaic, . . . Smith v. Congretation of St. Rose 61 N.W. (2d) 896
>
> This doctrine has been shot to death on so many different battlefields that it would seem utter folly now to resurrect it . . . . Fowler v. Cleveland 126 N.E. 72, 77 (1919)
>
> Little time need be spent in determining whether the strict doctrine of municipal immunity from tort liability should be repudiated. All this is old straw. The question is not 'Should we?:' it is 'How may the body be interred judicially with nondiscriminatory last rites?' No longer does any eminent scholar or jurist attempt justification thereof. Williams v. Detroit 111 N.W. (2d) 1, 10
>
> We therefore, feel that the time has arrived to declare this doctrine anachroistic not only to our system of justice, but to our traditional concepts of democratic government.
>
> After a re-evaluation of the rule of governmental immunity from tort liability we have concluded that it must be discarded as mistaken and unjust. Muskopf v. Corning Hospital Dist. 359 P. (2d) 457, 458.

> Legal scholars and commentators since the turn of the century have almost unanimously condemned the confusions and contradictions of municipal tort law. Price and Smith,Municipal Tort Liability:A continuing Enigma,6 University of Florida Law Review (1953),330.

> Haven't we waited long enough for the elimination of this absurdity from the law? Fuller and Casner, Municipal Tort Liability in Operation, 54 Harvard Law Review (1941) 437, 462

Subsequently, in 1963, the Wisconsin legislature enacted statute 895.43 setting up procedures for the filing of claims. No limit was placed on the amount of the claim, except that the maximum amount recoverable for damages, injuries, or death founded on tort against any volunteer fire company is $25,000.00

"Near-misses." A number of states, not described in the previous fifteen, have been deeply involved with tort liability legislation and have abrogated immunity for all or a part of their governmental subdivisions, excluding school Districts. Past experience, and particularly the cases of Lorton v. Brown County (239) and Harvey v. Clyde Park District No. 32 (184) (See p. 32) would indicate that future court and/or legislative action in the field of tort liability might reasonably be expected in all or some of these states.

Colorado, in 1957, permitted an action against the state racing commission, saying, "In Colorado, 'sovereign immunity' may be a subject for discussion by students of mythology, but finds no haven or refuge in this court" (83). Within three years, however, the court upheld immunity on behalf of the governmental functions of a county (234) and the decision still stands (three judges dissenting).

The Florida Supreme Court said that the Revolutionary War had abrogated the doctrine of "the king can do no wrong" and abrogated the doctrine with respect to governmental functions of municipalities (181). However, the Florida Appellate Court made it clear that the decision did not apply to the state, counties, or county school boards when it said in Buck v. McClean (60), "Regardless of our personal views, we feel that a proper administration of justice invites respect for the admonition of Alexander Hamilton who once wrote that courts 'must declare the sense of the law; and if they should be disposed to exercise Will instead of Judgment, the consequences would equally be the substitution of their pleasure to that of the legislative body.'"

The Supreme Court of Michigan attempted to deal with tort immunity in the case of Williams v. City of Detroit (439), when they held the City of Detroit not liable for the death of a man who fell down an open elevator shaft in a municipal building. In a divided opinion, they then proceded to prospectively overrule governmental immunity from tort liability. In the case of MacDowell v. State Highway Commissioner (246) and Sayers v. School District No. 1, (362) the court then clarified that only cities and villages were meant to be liable for tort, and the state and other subdivisions were still immune. In 1963, the Michigan legislature strengthened the position with Senate Bill No. 1249, and, effective July 1, 1965, the following stipluation (691.1407) became law:

> The doctrine of governmental immunity from tort liability is hereby reenacted as a rule of decision in the courts of this state and shall be applicable to all matters and to all governmental agencies in the same manner and to the same extent that it was applied in this state on September 21, 1961.

Two states, which still retain school district immunity, have recently abrogated immunity for non-profit charitable institutions.

The Idaho Supreme Court reversed the decision of a lower court in 1966 to pay a judgment against a church for a boy who fell off a cliff while on a church-sponsored hike. The court Commented, "It has not been right, it is not now right, nor could it ever be right for the law to forgive any person or association of persons for wrongdoing any other persons" (25).

In 1967 the North Carolina Supreme Court reversed a lower court to order damages to be paid by a negligent hospital (331). The court noted that "the overwhelming numerical weight of authority which had once bolstered the court's opinion in Williams (440) has now shifted to the other side.

In an opinion delivered June 3, 1968, the Arkansas Supreme Court abrogated immunity for its municipalities (only) (311). The Arkansas court quoted (439):

> . . . If the rule of liability imposes on the taxpayer either a curtailment of some municipal services or an increase in his taxes, still it will serve to assure him that the economic impact of any tottious injury he may suffer at the hands of a public employee would be shared with the other inhabitants of the city, rather than, '. . falling with awesometragedy' upon him alone

In summary, it must be said that those states that have effected abrogation, or near abrogation, have had a considerable variety of experiences in their journey through the land of governmental tort immunity. However, from the descriptions of this section three findings seem to stand out:

A. With fifteen states having effected abrogation of immunity for school districts and seven others having abrogated immunity for most of their other governmental subdivisions, and with the opinion of legal scholars and writers nearly unanimous in support of aborgation, it seems safe to say that there is a decided and perhaps accelerating trend toward abrogation of this doctrine.

B. In all states that have effected abrogation, the present law on the subject is a combination of judiciary action and pertinent legislation. Most often, the courts acted first through an interpretation of existing statutes or a judiciary fiat, but in some cases the legislature acted first without particular judiciary pressure. In all cases, the final result has been both statutory law and judicial case law. Whether combined effort is the result of, as Justice Black put it in the Williams case (439), "a basketball game between the judges and legislators with neither wanting to decide how the problem should be handled," or whether it represents a cooperative spirit between these two branches of government, or is simply the inescapable American democratic process of grinding out the will of the majority of the people, is moot. It does seem to be a fact that both the legislatures and the courts have had a part in the trend toward abrogation.

C. The courts are placing increasingly less credence on the argument that a school district "has no funds from which to pay claims." As more states have experienced tort liability, the experience incidence is growing rapidly. In none of the recent cases was any serious evidence presented that any governmental subdivision had been unable to function, or had had its governmental activities seriously impaired because of being subject to tort liability. Since the theory of sovereignty had previously fallen into total disrepute, the major argument remaining against liability is stare decisis--the fact that governmental subdivisions have come to rely on this doctrine, and have a right to expect its continuance. This seems to have become the main content of the legislative v. judiciary argument on the abrogation of immunity.

CHAPTER III

GOVERNMENTAL IMMUNITY IN MINNESOTA

The two key decisions which established immunity from tort liability for governmental units, including school districts, in the United States were discussed in Chapter II, pp. 6, 7. These were Russell v. the Men of Devon (358) and Mower v. Leicester County (277). Chapter III considers the introduction and history of governmental immunity in Minnesota.

In 1871, the Supreme Court of Minnesota did allow a person injured by a defective bridge to collect from a municipal corporation, the city of Minneapolis (370). The court cited the "Men ofDevon" case (358) which did not dispute that the County of Devon had a duty to maintain the bridge. In "Men of Devon" the court refused to allow the claim for a variety of other reasons, cited on pp. 6,7. The Minnesota court further cited Sp.L. 1867,Sec.2 of Chapter 5, "The common council shall have the power to levy a special tax upon all taxable property in the city or of the different wards of the same for the purpose of construction, maintaining and repairing roads etc." The court held that since the city had both a responsibility and funds, it should pay the claim.

Eleven years later, in 1882, the court differentiated between a municipal corporation and a quasi-corporation in Dosdall v. County of Olmsted (106) in what is generally regarded as the case which established governmental tort immunity in Minnesota. The plaintiffs were denied a claim resulting from an injury on the courthouse steps. The court said:

> . . . where, however a corporation (the county) receives a charter from the state, the enlarged powers granted and the nature of the duties expressly or impliedly enjoined have led to the distinction between municipal corporations proper, and quasi-corporations with limited statutory powers as respects the question of liability in individuals for the negligence of their officers or agents. The almost unbroken current of the authorities is that, as to the latter class of

> corporations, no such liabilities attach unless expressly provided by statute. This doctrine is too well and too long established to be questioned, and should be the recognized policy of the state which the legislature alone should change.

In 1883, a year later, the Town of Sibley was found to be not liable for its failure to repair a bridge, on the basis of "Men of Devon" (8) ("It is a strong presumption that that which has never been done before by law cannot be done at all"), and Dosdall, (106) saying, "In principle, we perceive no difference between this case and Dosdall v. County of Olmsted in which a rule analogous to that above was applied to a county and upon like grounds." The court also commented:

> /We/ . . . find it hard to distinguish in principle between cities and towns in respect to their liability for neglect of the duty imposed on them to repair streets and highways. But the distinction is established by the great mass of authorities and was recognized and acted on by this Court in Dosdall v. County of Olmsted. That case, I think, disposes of this.

The difference between governmental functions, which are immune from tort liability and proprietary functions, which are not, (discussed in general in Chapter II, pp. 18-22), was apparently solidified in Minnesota in the case of Snider v. City of St. Paul in 1892. The plaintiff's foot had been crushed as the result of negligent operation of an elevator in the city-county court house in St. Paul. The Minnesota Supreme Court's interpretation of this question which broadened the "shelter of immunity, was stated as follows:

> . . . But it is also generally held that they are not liable for negligence in the performance of a public, governmental duty imposed upon them for public benefits, and from which the municipality in its corporate or proprietary capacity derives no pecuniary profit. The liabilities of cities for negligence in not keeping streets in repair would seem to be an exception to this general rule, which we think the courts would do better to rest either upon certain

> special considerations of public policy, or upon the doctrine of "stare decisis" than to attempt to find some strictly legal principle to justify the distinction . . . . In Bryant v. City of St. Paul, (58) we held that the city was not liable for the negligence of the board of health in the discharge of its duties, the same being public and governmental and not corporate in their character. And, for a like reason, in Grube v. City of St. Paul (169), we held that the city was not liable for the negligent acts of its fire department. We fail to discover any distinction in the character in this respect of the duty performed by the city in maintaining a board of health, a fire department or a police department, and that one performing in its private or corporate capacity derives no more pecuniary benefit from than from the others, and in each case alike the purpose is a public and governmental one. The duty which a city performs in providing a city hall for the use of the public officers is exactly the same in its nature as that performed by the county in providing a court house for the use of its county officers.The inconsistency of holding that the County of Ramsey is not liable (as must be, under the Dosdall case) (106), but that the city is, would be forcibly illustrated by the special facts of this case. Our conclusion is that the city is not liable (382).

School district immunity was firmly established in Minnesota in 1892 in Bank v. Brainard, in which an eight-year old boy was refused recovery for the loss of a leg on the school grounds. In this decision, the Minnesota court cited an earlier Ohio case and said (122):

> . . . So the Board of Education is a corporation which holds and manages the property in its control as trustee for the district, for a public purpose. It is made its duty to take care of and keep in repair the property of the district, but that is a duty it owes to the district, and not to individuals, and is a duty imposed for the benefit of the public, with no consideration or emolument to the corporation; and it is given a corporate existence solely for the exercise of this public or administrative function. It is organized for educational purposes, not for the benefit or protection of property or business interests.

> . . . The rule as adopted and applied in those states which accept this doctrine is summarily stated in Shear. & R. Neg. para. 267, as follows: 'Boards of education, on which is imposed by the state the duty of providing and keeping in repair public school buildings exercise a purely public function and agency for the public good for which they receive no private or corporate benefit; and they are not, therefore, liable to an individual for the negligence of their servants in the business of such agency.

In reply to the plaintiff's citation of Statute 1878 G.S. Chapter 36, from which Statute M. S. 127.03 has evolved, the Minnesota court said it doubted that the statute was intended to render a school district liable for personal injuries for mere neglect to repair, but that the statute referred to a private breach of duty by a school officer to an individual, not a public duty.

In 1927, in a school bus accident case, the court reinforced school district immunity by defining the district as an "arm of the state" with governmental functions (7). The court went on to say that:

> . . . the Legislature has acquiesced in the rule of Bank(19) case for thirty-five years which indicates the court has correctly construed its intent in the statute (G. S. 1923) which apparently has been so practically construed for many years prior to that decision.

Stare Decisis, or historical immunity, was thus the law of the state, and was solidly reinforced in the 1929 case of Makovich v. Ind. Sch. Dist. No. 22, when recovery was refused to a high school student who was blinded by the use of unslaked lime for marking a football field (267). The court said:

> The rule that a municipality is not liable for damages for negligence in performing its governmental functions, unless such liability is imposed by the state has been followed and applied since the early days. . . . The rule is especially applicable to public quasi-corporations such as school

> districts which are governmental agencies with limited powers. They are arms of the state and given corporate powers solely for the exercies of public functions for educational purposes.

The court cited Ackert v. City of Minneapolis (3) and the earlier cases, Dosdall v. County of Olmsted (106), Altnow v. Town of Sibley (8), Bryant v. City of St. Paul (58), Grube v. City of St. Paul (169), Bank v. Brainard (19), Snider v. City of St. Paul (382), Gullickson v. McDonald (171), Miller v. City of Minneapolis (259), Claussen v. City of Luverne (80), and Brantman v. City of Canby (52).

The court then disposed of the plaintiff's request for relief under G. S. 1923 C. 3098 by citing the decisions in Bank v. Brainard (19),and Allen v. Ind. Sch. Dist. No. 173 (6).

The plaintiff also attempted to claim that the use of the unslaked lime in the manner stated created a nuisance and that for an injury caused by a nuisance (as opposed to negligence: the district should be liable. The court held that:

> . . . the rule of nonliability has been applied in cases where the facts disclosed a nuisance as clearly as in the present case; (citing) Bryant v. City of St. Paul (58),Grube v. City of St. Paul (169), Bank v. Brainard (19),Gullickson v. McDonald (171), Weltsch v. Town of Stark (432), Claussen v. City of Luverne (80). Tholkes v. Decock (410), LaMont v. Stavanough (226), Howard v. City of Stillwater (191), and Bojko V. City of Minneapolis (38).

From "Bojko" the court quoted (38):

> It is immaterial in what language the failure to perform the governmental function or authority be couched in the complaint; the rule of law on the subject cannot thus be changed. And the fact that the complaint in this action alleges that the failure to light the street in question resulted in creating a public nuisance does not materially change the legal aspect of the question. The alleged failure

> had relation to a governmental function, a failure to perform which is not actionable whether it be termed a nuisance or mere negligence.

The football game in which Makovich was injured was held under authority given to school districts under G. S. 1923, 2817, which is permissive, not mandatory. The plaintiff contended that permissive activities of the district as opposed to mandatory governmental functions are not immune from liability and cited Harff v. City of Cincinnati (180), Boise Development Company v. Boise City (37), and Brynes v. City of Jackson (62). The Minnesota court held that "The distinction between liability for torts in the performance of permissive and mandatory duties or activities of the municipalities has not been recognized in this state," citing Miller v. City of Minneapolis (259), and Emmons v. City of Virginia (111). The court then added, "The test is whether the municipality is or is not exercising only governmental functions."

The court also considered the fact that "a small charge was made for attendance at the football game." After reference to the general fact that cities and villages operating light or water departments are liable for negligence in so far as it carries on business for that purpose, the court said, "The fact of such charge would not appear sufficient to take the district out of its educational functions and convert its activity into one of business or proprietary character." The court then cited cases from other states holding that receiving some small or incidental consideration does not create liability where the municipality is exercising a governmental function, as follows: Nabel v. City of Atlanta (280), Benton v. Trustees of Boston City Hospital (28), Mahoney v. City of Boston (252), Krueger v. Bd. of Education (224), and Moulton V. City of Fargo (275).

The preceding Mokovich case was discussed in considerable detail because it illustrates effectively the apparent depth of the entrenchment of governmental immunity in Minnesota in 1929. The plaintiff's attack was broad and encompassed nearly every possible argument against governmental immunity. Yet every plea and contention was thoroughly refuted by the court, primarily on the basis of stare decisis.

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Twenty-six years later, however, in the 1955 case of Nissen v. Redlock, while barring a claim for recovery against a city for negligently permitting an eight-year old child to drown in the city swimming pool, the court began to question the justice and reason of the law, and said (297):

> . . . the matter of public recreational functional facilities is reaching such large proportions in this day and age that the time may well be here when greater consideration and attention must be given to the entire question of governmental immunity in connection with the operation and supervision of such places. However, it is not the function of the court to pass laws in this respect, and any change in this policy must come from the legislature.

In the case of Hahn v. City of Ortonville in 1953, in which the plaintiff was assaulted by a minor who was allegedly intoxicated as the result of drinking liquor furnished him by the defendant's agents in its municipal liquor store, the court held the city liable under the Civil Damage Act, M.S. 340.95, refusing to expand the "protection" of immunity, and said (172):

> . . . some states have already abolished the distinction between governmental and proprietary functions in keeping with the modern tendency which is to restrict rather than extend the doctrine of municipal immunity. The injustice of the immunity doctrine to injured individuals in this era of rapidly expanding governmental functions and services is apparent.

Subsequently, on December 14, 1962, the Supreme Court, in Spanel v. Mounds View School District No. 621, in which a five-year old boy was injured on a defective slide in a kindergarten classroom, affirmed the provision of tort immunity, but added (387):

> . . . with the caveat, however, that subject to the limitations we now discuss, the defense of sovereign immunity will no longer be available to school districts, municipal corporations, and other subdivisions of government on whom immunity has been conferred by judicial decision with respect to torts which are committed after adjournment of the next regular session of the Minnesota legislature.

In discussion of this decision, the court referred to the Hahn case (quoted above) and added:

> Thus the handwriting has long been on the courtroom wall. We have been troubled for three generations by the unheeded petitions of the lame Frederic Bank, the halt Jennie Snider, and the blind Frank Mokovich. Since we have repeatedly proclaimed that this decision is based on neither justice or reason, the time is now at hand when corrective measures should be taken by either legislative or judicial fiat.

The supreme court also traced the activities of retreat from tort immunity in other states (discussed in Chapter II of this book, pp. 24-41) and added:

> . . . Operating an educational system has been described as one of the nation's biggest businesses. The fact that subdivisions' of government now enjoy no immunity in a number of activity areas has not noticeable circumscribed their usefulness or rendered them insolvent.
>
> Nor have our privately endowed schools and colleges been forced to close their doors or curtail their academic and extracurricular programs because the law has imposed on them liability for the negligence of their employees in dealing with students and the public. Whatever may have been the economy in the time of "Men of Devon," it is absurd to say that school districts cannot today expeditiously plan for and dispose of tort claims based on the doctrine of respondeat superior.

The supreme court's reference to "subject to limitations we now discuss" (p. 52) was clarified later in the opinion as follows:

> However, we do not suggest that discretionary as distinguished from ministerial activities, or judicial, quasi-judicial, legislative, or quasi-legislative functions may not continue to have the benefit of the rule.

The first illustrative case cited in reference to defining "discretionary" activities was Lipman v. Brisbane Elementary School District (237). A school superintendent brought tort action against the district, three trustees, the county superintendent of schools and the district attorney for alleged wrongful interference with her contract for performance of services. The California court said:

> . . . With respect to the complaint against the district, the acts alleged, . . . were of a discretionary character. . . . In the absence of compliance with the statutory requirements there was no authority for the acts complained of by the plaintiff . . . and it is obvious that the district cannot properly be held liable for acts which have not been duly authorized.

As a further limitation, the Minnesota Supreme Court declared, "Nor is it our purpose to abolish sovereign immunity to the state itself." The court cited Berman v. Minnesota State Agriculture Society (29), "Since the adoption of the 11th Amendment to the Constitution, it has been uniformly held that a suit by an individual cannot be maintained against a sovereign state without its consent."

The Minnesota Supreme Court also said by implication that it would not look unfavorably upon ". . . a number of procedural and substantive proposals for the processing of claims . . . ." Those identified were:

> (1) a requirement for giving prompt notice of claim after the occurrence of a tort, (2) a reduction in the usual period of limitations, (3) a monetary limit on the amount of liability, (4) the establishment of a special claims court or commission, or provision for trial by the court without a jury, and (5) the continuation of the defense

of immunity as to some or all units of government for a limited or indefinite period of time.

Thus, when the Minnesota state legislature convened in January, 1963, it had been served notice that if it did not enact legislation in the field of tort immunity for governmental units before adjournment of that session, there would thereafter be no such immunity.

Prior to the date of the 1963 legislative session, the Minnesota legislature had not totally ignored the tort liability problems. Despite long-standing governmental immunity from tort liability, the legislature had passed a number of statutes mitigating the harshness of total governmental immunity. A citizen in Minnesota who had a claim against the state (or other governmental subdivision) had a choice of several remedies:

A. Bring an action against the governmental employee or officer whose act or omission gave rise to the claim.

B. Sue the governmental unit as provided by the statute cited:

   1. suit of watershed districts; M.S.A. 112.70
   2. suit of sanitary districts; M.S.A. 115.25
   3. suit of municipal liquor stores; M.S.A. 34.95
   4. suit of Metropolitan Airport Commission; M.S.A. 360.101-.125
   5. suit of Metropolitan Mosquito Control Board M.S.A. 399.04
   6. suit of employees of police and fire departments who may then be indemnified by cities, boroughs, and villages; M.S.A. 418.11
   7. suit of park boards and park districts; M.S.A. 448.33
   8. suit of port authority commissions; M.S.A. 458.09
   9. suit of housing authority commissions; M.S.A. 462.455
   10. suit against the insurer of a school district up to the amount of the policy purchased to protect pupils against injuries received from athletics or supervised physical activities; M.S. 123.17 (in districts that voluntarily carry such insurance)

11. suit against the insurer of a school district for damages resulting from the wrongful acts of district employees; M.S. 123.20 (in districts that voluntarily carry such insurance)
12. suit against the insurer of school districts, towns, villages, borough or cities, for claims arising out of the operation of a motor vehicle by an employee in the exercise of his duties; M.S. 471.42-.43 (school districts participate voluntarily, may pay premium, but its liability in unaffected by the insurance it carries or does not carry)
13. suit against the insurer of a school district for damages or injuries arising out of the wrongful operation of school bus or buses; M.S. 123.39 (in districts that voluntarily provide such insurance)
14. suit against the insurer of a school district for damages or injuries arising out of the wrongful acts of the officers or employees of the district; M.S. 123.41 (in districts that voluntarily insure their officers and employees)

C. Request a gratitious settlement from the legislature; M.S.A. 3.66-.84

1. claimant requests legislator to introduce a bill at the next session of the legislature appropriating an ammount sufficient to satisfy claim
2. bill is referred to house claims committee or subcommittee of senate finance committee
3. informal hearings of claimant, legislator,government department head or other party are held and a decision is reached on the basis of findings.

According to the "Report of the Subcommittee on Immunity of the State from Suit" as reported in the Minnesota Law Review (338), "The main criticism of the present system is not that the legislature refuses to recognize valid claims, for it does recognize them, but rather that the system is inherently unsuited for the job of providing prompt and efficient adjudication of those claims."

The report cited several types of deficiencies as follows:

1. Claims based on breach of contract or tortious conduct involve legal questions which should be adjudicated by men with legal training. For example in 1947, of the 150 individual claim bills introduced in the legislature, many appeared to be grounded in tort and contract. The validity of these claims could best be determined by men of legal training; yet the House claims committee consisted of a lawyer, a bricklayer, and a commercial beekeeper. The committee was composed of two lawyers and a trainman in 1945, three farmers in 1943, two farmers and one lawyer in 1941, two lawyers and one farmer in 1939, and a union official, banker, lumberman, insurance and real estate salesman, minister and a farmer in 1937.

2. Political considerations and not the merits of the claim sometimes govern its disposition.

3. Although the claims appear to be judged on their merits, the public's ignorance of presenting claims may sometimes lead to allegations of irregularity. In 1943, for example, a legislator was allegedly requested to introduce a claim bill on behalf of a nurse, who in the course of her employment with the state contracted tuberulosis. (Minneapolis Star-Journal, August 14, 1943) Allegedly he informed her that there would be a slight charge to "buy new hats for the members of the house claims committee." The "slight" charge turned out to be $320, one-third of the cost of the claim. The legislator was subsequently "arrested on the charge of extracting a bribe." He is then said to have stated that the money was to be used to buy "gift bonds" for the members of the house claims committee. On arraignment he contended that he received the money as a legal fee.

4. In the 1947 session a claim was presented which grew out of the sudden death of a man which caused investigation of the circumstances. A county employee analyzed some milk which the victim had drunk, and asserted it contained poison. The widow was indicted and jailed to await trial. It was later revealed

that the milk was pure and that the county employee might have been negligent in making his analysis. After release the widow requested the introduction of a bill to award her damages for the detention and injury to her reputation. The bill was approved by the House Claims Committee, but was rejected by the Senate Finance Committee.

5. The legislators must spend valuable time considering these bills of limited application which could well be spent on bills affecting the general welfare.

6. Because of the limited time available, the legislators are unable to give each bill the amount of consideration it deserves.

7. The claimant must wait until the legislature convenes, and acts, before he may obtain redress. That delay may prevent both the claimant and the government from obtaining the witness and evidence essential to a fair determination of the claim, and may result in a serious miscarriage of justice.

In the 1961 legislative session, a State Claims Commission law was enacted. The commission consists of three senators, appointed by the committee on committees, and three house members, appointed by the speaker of the house. The claim commission submits to the legislature a bienniel report which is advisory in nature and must be enacted before the claims can be paid.

Such was the legislative background on governmental tort immunity prior to the "advisory" Spanel decision of the Minnesota Supreme Court. The activity generated by the Spanel decision was traced by Springborg (389),which includes a chapter on "The Reaction of the 1963 Legislature to the Spanel Case".

In brief, the 1963 legislature enacted Chapter 798 (Appendix A) which, with limitations, essentially abrogated immunity for municipalities, defined in the act as cities, villages, boroughs, counties, towns, public authorities, public corporations, special districts or any other political subdivision. However, the act specifically excluded school districts and towns not exercising the powers as villages granted under M.S. 1961, Section 368.01 as amended, until January 1, 1968.

The 1963 legislature also appointed a Governmental Immunity Interim Commission, created by Chapter 888, Laws of 1963. The commission consisted of ten members: five senators and five representatives. Of these members,five were lawyers, and five were non-lawyers. Duties of the commission were set forth as follows:

1. To investigate and study the doctrine of governmental immunity liability, and suits against the state, municipal and quasi-municipal corporations, political subdivisions and instrumentalities of the state of Minnesota.

2. To study the laws of this state and the laws and experiences of such other jurisdictions as may be applicable and pertinent.

3. A study to be made for the purpose of codifying and clarifying the statutes of the State of Minnesota pertaining to governmental immunity.

4. To recommend additional legislation in this area as such investigation and analysis might deem appropriate and necessary.

In brief, the majority report of the commission outlined some of the remaining problems, such as the inconsistency of coverage of the various governmental subdivisions and suggested no action by the 1965 legislature pending further study and a new report to be presented to the 1967 legislature. The minority report held to continuing immunity for school districts and towns not operating as villages, but joined in the recommendation for continued study.

Hence, the only new action taken by the 1965 legislature was to extend the immunity limitation for school districts and certain types of towns from January 1, 1968 to January 1, 1970. The 1965 legislature also reinacted the interim study commission for governmental immunity. This committee held three hearings, but did not undertake any concerted research on the subject. No action was taken on the governmental immunity law by the 1967 legislature.

During 1965 and 1966, the new law abrogating immunity for municipalities was challenged in district court in the case of Williamson v. City of Bloomington and Bloomington Public School District No. 271. Counsel for the plaintiff argued that M. S. A. Sec. 466.12 was class legislation because it excluded school districts. Plaintiff cited Article I, Sec. 2, of the Minnesota Constitution which reads, in part, as follows: "No member of this State shall be deprived of any of the rights or privileges secured to any citizen thereof" and the Federal Constitution,14th Amendment, in Section 1 which reads, in part, as follows: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." Plaintiff contended that M.S.A. Sec. 466.12 arbitrarily discriminated against persons having tort claims against school districts because it grants immunity to school districts,whereas persons similarly situated may assert tort claims against other governmental subdivisions, which are no longer able to assert the defense of sovereign immunity.

In upholding Sec. 466.12, Judge Brand of the district court said (441):

> Whether the Legislature should have put school districts in a class by themselves or whether this Court would have done so is immaterial. Whatever else might be said about the legislation in question, it cannot be said that the classification is arbitrary and unreasonable. The Legislature has broad discretion, and it was properly within its constitutional power to tackle the problem of sovereign immunity one step at a time and to deal with the particular matters which seemed to it the most acute. Legislation is not unconstitutional merely because it does not remedy all evils at one time.

The previous discussion summarized legislative and appellate court action up to September, 1968. At that time approximately 104 Minnesota school districts carried general liability insurance. They were included under Chapter 798, the remainder of Minnesota school districts were not. If the 1969 legislature had not acted at all, all districts would have lost their immunity and would have been included under the provisions of M.S. 466.01 to 466.17 as amended.

The 1969 legislature had available the Ph. D. study of W. C. Knaak, "A Study of Legal Trends and School District Liability Experience For The Purpose of Predicting Ultimate Costs For School Districts in Minnesota if Tort Immunity is Abrogated on January 1, 1970". (unpublished thesis, University of Minnesota, 1969)

The purpose of Knaak's thesis was to study legal trends and school district liability experience for the purpose of predicting ultimate costs for school districts if tort immunity was abrogated as scheduled on January 1, 1970.

In order to collect relevant data, Knaak queried state government offices, local and out-of-state state districts that carry general liability insurance,the National Safety Council, The Minnesota School Boards Association, the Insurance Rating Board, private insurance companies, the office of the Minnesota Legislative Research Committee, and the office of the Minnesota League of Municipalities. In addition, extensive legal research was carried on at the University of Minnesota law library.

A summary of the findings of the research is as follows:

1. Nearly all legal scholars and current academic researchers (since 1956) recommended abrogation of immunity for school districts. Most prefer legislative abrogation as being less disruptive than judicial abrogation.
2. In recent years, respect for "sovereign immunity" has diminished "The king can do no wrong" concept has little support. Those courts that have continued to uphold immunity have done so primarily on the basis of stare decisis and held that if there is to be a change, the legislature should do it.
3. There were virtually no states where some means of insuring governmental responsibility had not

been found. Among these means, legislative enactment on specific governmental tort cases was considered to be unsatisfactory.

4. It apparently has not been possible to develop consistent guides to help the courts decide if specified tortious acts are governmental or proprietary. The results have been somewhat chaotic.

5. The investigator identified fourteen states as having surrendered enough of their school district tort immunity to be considered "abrogated" states. (Minnesota "abrogated" after the research was completed.)

6. The courts have been placing increasingly less credence on the argument that a school district "has no funds from which to pay claims." Several courts suggested insurance as a means by which a governmental body can meet its tort obligations.

7. In cases of admitted negligence, at least five defenses other than immunity were identified which might limit a school district's liability. These were contributory negligence, assumed risk, proximate cause, intervening cause, and improper procedure.

8. Study of school district negligence cases indicated that most accidents resulting in claims originate from: (1) failure to provide supervision, (2) hazardous conditions in buildings, doors, corridors, classrooms, gymnasiums and shops, (3) hazardous conditions on school grounds, including defective playground equipment and appartus, (4) hazardous conditions involving walking to and from school, transportation of pupils in buses, in other school vehicles and in private automobiles.

9. Some "systems" for preventing accidents and minimizing liability included: (1) a plan for development (2) coordination of the plan or policies (3) reporting procedures (4) safety inspection (5) preparation for emergencies (6) adequate supervision (7) claim handling procedures.

10. Insurance rates developed by professional rating organizations appeared to be the most systematically collected and comprehensive data available on liability insurance costs.

11. Minnesota's present liability insurance rates were comparatively high, with only four other states having higher rates.

12. Median and average general liability insurance rates in states that have effected abrogation of immunity were approximately double the median and average rates of states that have not abrogated immunity. Rate increases in abrogated states averaged about twenty-two per cent since 1960, as compared to seventy per cent in non-abrogated states.

13. Generalization from general liability insurance costs of the 104 Minnesota school districts carrying this type of insurance was of questionable validity because of wide variance in (1) coverage, (2) claim experience, (3) rate areas, (4) school purchasing policies, (5) accuracy and extent of information about rates available to the local administrator and local agent, and, (6) reluctance of some insurance companies for competitive reasons, to provide rate data.

14. The summary of insurance cost data for Minnesota school districts carrying liability insurance indicated (1) great variety exists in liability coverage, (2) a majority of reporting districts exceeded state tort liability act requirements, (3) the average per pupil rate paid out in 1966-67 was $.354 per pupil, and, (4) there was no upward trend in average insurance rates during the past three years.

15. Comparison of Minnesota school districts with individual school districts in other abrogated states was of doubtful validity because of variance in coverage, claim experience, rating areas, accuracy and extent of available information, purchasing policies, state laws, judiciary and local customs.

16. The Illinois Supreme Court has ruled unconstitutional: (1) governmental immunity for park district playgrounds when all other governmental subdivisions were liable for their torts committed on playgrounds, (2) special procedural requirements for filing claims against school districts when other governmental subdivisions had no such requirements, and, (3) limit of $10,000 for claims against school districts when other governmental subdivisions did not have limitations.

The conclusions Knaak derived from his study were:

1. There is a pronounced, and perhaps accelerating trend in the United States' toward abrogation of governmental immunity for school districts through legislative and judicial action.

2. There is a distinct possibility that if the Minnesota legislature passes a law granting immunity to school districts, that law could be declared unconstitutional because other governmental subdivisions are not immune. This has been the pattern in Illinois. In the event of judicial abrogation, Minnesota school districts could be left with no immunity and no limitations on suits.

3. If immunity is abrogated under a law which provides procedural and amount limitations, all Minnesota school districts will be able to afford the necessary liability insurance. Such insurance will be available unless a school district refused to correct unsafe accident-producing conditions.

4. Annual additional costs for insurance in the State of Minnesota under controlled liability are estimated to be $327,259 which represents an average of 42.8 cents per pupil, or, 17.9 per cent increase over the 36.3 cents average paid in 1966-67 by the reporting school districts that carried general liability insurance. Half of this, or $163,630 would be required for the 1969-70 school year if immunity ends,as scheduled, on January 1, 1970.

5. An explanation of why some school districts in Minnesota carry liability insurance and some do not was not available from this study. The explanation did not seem to be related to (1) size of school district, (2) maintenance costs of school district, (3) amount of adjusted assessed valuation per pupil, (4) ratio of the percentage of state aid to maintenance costs, (5) amount of local taxes paid for school purposes, or (6) metropolitan population concentration.

6. Although the median liability insurance rates in abrogated states are approximately double the liability insurance rates in non-abrogated states, they appear to be more "stable." While rates in the abrogated states increased twenty-two per cent from 1960 to 1968, rates in non-abrogated states increased seventy per cent.

7. Insured Minnesota school districts are already fully liable for their torts under the law. Therefore, controlled liability for the remainder of the school districts should result in a rate increase of only about ten per cent.

After consideration of the findings and conclusions of his study, and the specific situation in Minnesota, Knaak developed the following nine recommendations:

1. The 1969 legislature should include school districts with the other Minnesota governmental subdivisions under the abrogation law, Chapter 798.
2. The claim limitation of $50,000 per individual provided in Chapter 798, should be increased from $50,000 to $100,000.
3. The time limitation for notification of injury provided in Chapter 798, should be increased from thirty to ninety days.
4. Maximum recover for property damage of $50,000 should be set.

5. A mandatory limitation of liability of $300,000 regardless of the amount of insurance carried should be prescribed by statute.

6. Minnesota Statutes 123.17 should be amended to require that all school districts make available pupil accident insurance.

7. Chapter 798 should be amended to include a requirement that a plaintiff who brings an action against a government subdivision post a bond, the amount to be determined by the court (but not under $100 unless the plaintiff is destitute).

8. Chapter 798 should be amended to include a reasonable limitation on plaintiff attorneys' fees in suits involving governmental subdivisions, and in claims settled out of court.

9. Chapter 798 should be amended to require casualty insurance companies writing school liability insurance in Minnesota to systematically report their claim experience to the state insurance commissioner for a period of six years after school district immunity abrogation.

With Chapter 798 already on the books, no new legislation for the abrogation of school district immunity was introduced into the 1969 legislature. Three different bills aimed at continuance and permanent restoration were introduced and considered by the house and senate judiciary committees.

Late in May a compromise bill was recommended, passed both houses, was signed by the governor, and became Chapter 826, Laws of 1969.

This new law amended Chapter 798 by adding Subdivision 3a, and by amending sections 3,4, and 5 as follows: (Underlined portions represent new language of the law.)

Subd. 3a. A school district shall procure insurance as provided in section 466.06, meeting the requirements of section 466.04, if it is able to obtain insurance and the cost thereof does not exceed $1.50 per pupil per year for the average number of pupils. If, after good faith attempt to procure such insurance, a school district is unable to do so, and the commissioner of insurance certifies that such insurance is unobtainable, it shall be subject to the provisions of 1 and 2. If the school district fails to make a good faith attempt to procure such insurance and the commissioner of insurance does not certify that such insurance is unobtainable, then in that event section 466.12 shall not apply to such a school district and it shall be subject to all of the other applicable provisions of chapter 466.

Sec. 3. Minnesota Statutes 1967, Section 466.12, Subdivision 4, is amended to read:

Subd. 4. This section is in effect on January 1,1964, but all of its provisions shall expire on July 1, 1974.

Sec. 4. Minnesota Statutes 1967, Section 466.13, Subdivision 4, is amended to read:

Subd. 4. This section is in effect on January 1,1964, but all of its provisions shall expire on ~~January 1,1970~~. July 1, 1974.

Sec. 5. This act is effective January 1, 1970.

The reference in the law to section 466.06 and 466.04 simply says that school districts now must purchase insurance in the same manner that municipalities and the 104 other school districts had been doing. (See App. A) The only exceptions are those that cannot obtain insurance at $1.50 per pupil average cost for a year. Since the highest cost per pupil reported in the survey of 104 districts was 71.6 cents per pupil (See p.116), it seems unlikely that this will eliminate many districts. If testimony from insurance experts is accurate, the only reason for such a rate in Minnesota would be that the district refuses to correct grossly unsafe conditions. This appears to be a very unsatisfactory reason for granting immunity to that school district. However, pressure from parents and refusal of employees to work under such conditions would very likely influence the school district to make the necessary corrections in order to qualify for insurance coverage.

Changing the dates in Sections 466.12 and 466.13 from January 1, 1970 to July 1, 1974 apparently has the effect of keeping open until that date the immunity provisions for districts that cannot obtain insurance at $1.50 per pupil. At that time, all of the school districts would come under the general provisions of the act,unless the legislature acts in the interim.

Estimation of costs for the insurance coverage being provided is covered in Chapter VI.

Another phase of the Minnesota school district tort liability history has been written. In all probability, it will not be the last. A number of problems such as multiple-choice maximums, inadequate individual claim limitations, tight time limitations and requirements for insurance reporting remain unresolved. The 1969 legislature also provided for another interim commission to study liability insurance. It is hoped that these and other remaining tort liability problems will receive due consideration from the commission.

CHAPTER IV

PROCEDURAL AND ORGANIZATIONAL SCHOOL DISTRICT POLICIES TO PREVENT ACCIDENTS AND MINIMIZE SCHOOL DISTRICT LIABILITY

I. DEFENSES AGAINST NEGLIGENCE

The earnestly concerned opponents of governmental tort liability have envisioned for the benefit of legislattive committees the specter of a host of injured citizens bringing suit against school districts for gross or trivial claims, being awarded fabulous sums by "friendly" courts, thus bankrupting the district, and upsetting the educational program.

In this chapter, an attempt was made to analyze the experience of court action on tort liability in recent years in order to bring this experience to bear on the liability exposure of current school programs.

According to Garber and Reutter(149, p. 87),"Liability . . . has its roots in negligence. Just what constitutes negligence is not always clear. In any case the question of whether there is or is not negligence is one of fact, and therefore can be one for the jury.

An important fact of which schoolmen should be cognizant is that even when negligence is an admitted fact of a tort liability case, there are still at least four defenses which may render demurrable, or limit, the school district's liability.

The first of these is contributory negligence--a claim by the district that the injured party contributed to his own injury by his own negligence. The state of Pennsylvania has one of the firmest rules on this topic. In the case of Rodriquez v. Brunswick Corp. (364 F.(2d)282, 1966), the United States Court of Appeals had this to say on contributory negligence as a defense against liability:

> The main contention of the defendant is that plaintiff's evidence shows that he was guilty of contributory ngeligence as a matter of law. The strict rule prevails in Pennsylvania that if the negligence of the plaintiff contributed in any degree, however slight, to his injury,he is guilty of contributory negligence and cannot recover even though the defendant was negligent.

In 1961 the Supreme Court of West Virginia, in the case of Petras v. Kellor (319), ruled that a woman who fell while attempting to descend a stairway, the treads of which were rounded, wet, and slippery on the side of the stairway opposite to the side on which there was a handrail was guilty of contributory negligence in not using the handrail. She was denied recovery.

In a 1964 New York case a student was voluntarily working after school, unsupervised, on scenery for a play. The lights in the auditorium went out suddenly; although an "immediate and safe means of exit was at hand," the student was injured while "running about the auditorium in darkness " The court ruled that this constituted contributory negligence, and was one of the factors considered in the rejection of his claim (401).

Another defense against liability for negligence is "assumed risk." In fact, the two are so often plead together and so seldom considered separately that they were not separated for consideration in this chapter.

For example, in another New York case (366), a twelve-year-old boy was walking on a fence which was properly maintained, but not intended for and not adaptable to that purpose. When he fell and was injured, the court ruled that the boy "assumed the risk" of using the fence in that manner, was guilty of "contributory negligence," and could not collect damages.

In the case of Goldstein v. Board of Education of Union Free School Dist. No. 23 of Town Of Hempsted (161), an eight-year-old went to play on the school premises on Memorial Day. A horizontal ladder, in the process of being installed, had been left lying on its side on the grass. A group of children raised the ladder to play on it, and in the process, the boy was injured. The court ruled that when the boy went to play on the school grounds on Memorial Day, he "took the premises as he found them," and that the horizontal ladder lying on the grass was not an "inherently dangerous article" but was made so by the activity of the children. His claim was not allowed.

A board of education, conducting a program to raze a building went to considerable effort to inform their staff of the program and of the possible hazards involved. Hence the board was not liable in tort to a teacher who was injured when he fell over a rock at night because he knew of the hazard and had assumed the risk of being in that area after dark (27).

A New York school which had established rules and regulations for student work in the science laboratory was found not guilty of negligence because the thirteen-year-old boy who was injured while "fooling around with chemicals" was guilty of contributory negligence (438).

Less clear-cut was the case of the adult participating in a community recreation basketball game, when his momentum carried him off the court and through a glass window in a door behind the basket. The school district contended, and the lower court agreed, that in playing on that court, the plaintiff assumed the risks involved in playing basketball there, especially since he knew that the door was close to the basket. In a split decision the higher court disagreed and ruled that while he could see the location of the door (393),

> he could have reasonably assumed that since the glass was so close to the basket that it was,at least, of a type which would resist the pressure of an impact such as may occur during the course of a basketball game; and it could be found that he was, therefore, unappreciative of the danger produced by the use of window glass.

The previously cited cases make it clear that contributory negligence and assumed risk are very real and available defenses against negligence claims, even when the injured party is quite young. However, it should be stressed that in all of those cases, the claimant had complete freedom and choice over his actions. The courts have been quite firm in holding that if a pupil contributes to his injury while following instructions of teachers or school officials, he is not guilty of contributory negligence.

For example, in the case of Feuerstein v. Board of Education of the City of New York (120), the teachers and assistant principal required a "frail and pallid fourteen-year-old public school student, whose frailty had been noticed by the home room teacher" to carry packages of supplies and books around the building in connection with his duties as supply room monitor. The student was not guilty of contributory negligence when after he experienced heart pain, he continued to carry the books as directed.

Similarly, in Keesee v. Board of Education of the City of New York (211), a student who was an involuntary participant in a game of line soccer being played under special rules alleged to be particularly dangerous, was not guilty of contributory negligence because he did not refuse to participate in the game.

A second category of defense against negligence is referred to as the necessity for proximate cause.

The supreme court of the state of Washington dealt in depth with this defense in the 1960 case of Coates v. Tacoma School District (81). The court held that the school district was not liable to an intoxicated student who was injured in an auto accident in another county at 2:00 a.m. on Sunday morning while participating in a "club" initiation to which no school employee was assigned as advisor. The court commented on "proximate cause" by saying that a complaint for personal injuries is demurrable:

> (1) if it fails to allege facts from which it may be inferred(a)that the act or omission of the school district, on which liability depends, was within the scope of its authority; (b) that the relationship to the school district was responsible for such act or omission, made the principle of respondeat superior applicable; and (c) that the school district owed a duty to the plaintiff, which was breached by the act or ommission complained of,

> (2) where the event causing the injuries is so distant in time and place from any normal school activity that it would be assumed that the protective custody was in the parents, unless facts and circumstances are alleged which extend the duty of the school district beyond the normal school district--student relationship,
>
> (3) where the degree of proximity between the breach of duty complained of and the events in the causal chain resulting in the injuries sustained is so remote that it can be said, as a matter of law, that the breach of duty was not a proximate cause of the injuries.

"Proximate cause" has been used sucessfully as a defense against "lack of adequate supervision" negligence cases against school districts. The courts have generally held that proof of inadequate supervision does not in itself render a school district liable unless it can be shown that the accident would not have happened if there had been adequate supervision. In other words, the lack of supervision must be the "proximate cause" of the accident. In a Louisiana case, a boy was struck in the eye by a stick in the hands of a girl student, while he was teasing another girl student. The accident occurred while the children were on the school grounds waiting for the school bus. The Louisiana court said (281):

> There can be no argument that the School Board, through its agents and teachers,is required to provide supervision while school children are awaiting their school bus. However, in order to recover . . . there must be proof of a causal connection between the lack of supervision and the cause of the accident . . .
>
> The record is void of proof that the plaintiff, by a preponderance of the evidence, has proven that the School Board, any of its agents,teachers or employees, could have prevented the injuries even if they had been next to the plaintiff's son or standing next to the child who struck him in the eye with the stick . . No one can predict what the actions of children of eight or nine years of age will be while playing on a school ground . . .

> It is the holding of this court that the plaintiff has failed to show that there was a dereliction of duty by the school teachers . . . and, likewise has failed to show that there was any causal connection between the alleged dereliction and the accidents which were the basis of this action.

In Conway v. Board of Education of the City of New York (86), a pupil was injured in a stairway accident while the teacher was negligently conversing with another teacher in a nearby hall, instead of being at her post. The court ruled that the conduct of the pupils was not so unruly or disorderly that if the teacher had been present she would have been required to take positive action to restore order. Therefore, her absence was not the proximate cause of the accident and the board was not held liable.

Similarly, in a California playground accident case (360), the appellate court said, "To render a school district liable because of lack of supervision there must be a proximate causal connection between inadequacy of supervision and the accident."

However, there are definite limits to which the theory of "it would have happened anyway" as a defense against a claim of lack of supervision may be applied. An absence of a teacher from a classroom for twenty-five minutes was held to be the proximate cause of injury when a pupil was stabbed by a classmate who had been wielding a knife for five to ten minutes before the stabbing occurred (76).

A third category of defense against negligence is intervening cause. Although somewhat related to proximate cause, it has enough individual factors to be considered separately here.

An Arizona school district plead intervening cause when a student was injured in an auto mechanics class. The boy was injured when a number of boys jumped on an auto top which had been cut away from the chassis by another student. As a part of their defense, the school district contended that the injuries "were proximately caused by the independent, intervening act of the students rather than by any negligent conduct on the part of the teacher, thereby relieving the defendants of liability." The lower court ruled in favor of the school district, but the court of appeals reversed the decision and remanded the case for a new trial with the comment (272):

> Absent a special relationship, a person has no duty to control the conduct of a third person so as to prevent him from causing physical harm to another . . . A pupil-teacher relationship, however, imposes upon the teacher a duty to control the conduct of the pupils in his class to prevent them from harming another pupil.

The supreme court then vacated the decision of the court of appeals, saying:

> To hold that (the mechanics class teacher) had to anticipate (the jumping boy's) act and somehow circumvent it is to say that it is the responsibility of a school teacher to anticipate the myriad of unexpected acts which occur daily in and about schools and school premises,the penalty for failure of which would be a financial responsibility in negligence.We do not think that either the teacher of the district should be subject to such harassment nor is there an invocable legal doctrine or principle which can lead to such an absurd result.

In a California case, a six-year-old boy became ill in school. The school called his home and suggested the boy be taken home. His eleven-year-old brother, also ill, came to get him on his bike. While riding home, the eleven-year-old was injured. Damage claims were refused by the court on the basis that there was no lack of ordinary care in sending a six-year-old boy home with an eleven-year-old and that it was not up to the school district to find out how he was taking home the six-year-old (217).

Similarly, in Chmela v. Board of Education of the City of New York (72), the teacher was negligently absent when a pupil fell down a staricase. However, there was nothing to show that there was overcrowding, congestion, or milling on the staircase, but rather that the pupil was caused to fall by being punched twice by another pupil (intervening cause). Hence, the board was not liable.

In a snowball throwing case (230), discussed more fully under "Supervision," p. 79 of this chapter, the New York Supreme Court concluded, "A school is not liable for every thoughtless or careless act by which one pupil may injure another." The court also cited (79), (43), (306), and (189).

Meyer v. Board of Education (254), provides a good illustration of intervening cause. A pupil sustained injuries to his finger when it was caught and mangled in the belt-drive mechanism of the jig saw. The plaintiffs charged negligence in that the saw did not have a safety guard. However, the injury occurred when a second pupil, in violation of known safety practices, turned on the switch of the saw while the plaintiff was engaged in cleaning it. It was established that the shop teacher had conducted and maintained an adequate safety program. The court ruled that the act of the second pupil in turning on the machine was an independent, intervening act, and the lack of the saw guard was not the proximate cause of the accident.

The fourth general category of defenses against negligence is improper procedure on the part of the plaintiff. In states that have abrogated immunity and established claims procedures, the failure of the plaintiff to reasonably follow such procedures may render a claim invalid. This fact was sustained by the California Appellate Court in 1968 when they said (350), "In view of the liability of public entities for negligence of its employees, it was not unreasonable to set up claims procedures . . ."

However, in a Wisconsin case where there was a conflict between the claim procedures of the abrogation law and a previous law, causing some confusion to the plaintiff, the court allowed the plaintiff to proceed with his case, even though it had passed the time limitation in the law (313).

A 1960 New York case (190) was dismissed because the notice was sent by regular mail to the school board instead of being served on the board, trustee or clerk. The court could not waive failure to comply with the statute.

There was some concern among schoolmen when two of the restrictive claims provisions affecting school districts were ruled unconstitutional by the Illinois Supreme Court. The first of these, Lorton v. Brown County Community School Dist. No. 1 (240), held that the six-month limit for filing claims was unconstitutional. The second, Treece v. Shawnee Community School District No. 84, (416) added that the $10,000 limit on awards was unconstitutional. It is important to look at the court's reasoning before drawing hasty conclusions.

The Illinois legislature had reacted to the judicial abrogation of immunity by passing separate claims procedures laws for school districts as opposed to municipalities and other governmental subdivisions. The school district claims procedures were more restrictive than the procedures for other governmental subdivisions, as for example, having a six-months time limitation for filing claims, as opposed to no notice requirement for a municipality. Claims against school districts had a $10,000 limit on awards, as opposed to no limit for municipalities.

In both of these cases, the court cited sec. 22 of Article IV of the Illinois constitution which reads, in part, as follows: "The general assembly shall not pass local or special laws in any of the following enumerated cases . . . granting to any corporation, association, or individual any special or exclusive privilege, immunity or franchise . . ." In brief, these provisions were ruled unconstitutional because they were different from the claims limitations provisions enacted for other governmental subdivisions, in that state, not because the limitations were inherently unconstitutional.

It probably cannot be said with certainty that no court will ever rule claims limitations unconstitutional per se, but that interpretation should not be construed from the two previously cited Illinois cases, nor from any other cases reviewed by the author.

The Minnesota Supreme Court, in its prospective abrogation of immunity in 1963, strongly implied that the time and dollar limitations would be considered favorably in a statute enacted by the legislature (see pp. 53-54).

In summary, a school district is not defenseless in the courts, even in circumstances where immunity has been abrogated and the negligence is an admitted fact. The defenses of contributory negligence, proximate cause, intervening cause, and improper procedure, have been used effectively against negligence claims, and undoubtedly will continue to be. While it is admittedly preferable to be more concerned about preventing accidents than about avoiding liability as Rosenfield pointed out (353); in the interests of safeguarding school funds under the law, however, schoolmen should be aware of these defenses and their appropriate applications.

II. THE NATURE OF NEGLIGENCE

The "defenses" of the previous section were based on admitted negligence. The next very difficult question is: "What constitutes negligence?" As stated on page 68 of this chapter, negligence is a question of fact, and therefore must be decided in each instance. However, case law, particularly in states that have abrogated immunity, is beginning to provide some clues as to what does or does not constitute negligence.

A test often applied in determining whether a school district or its employees were negligent is the test of forseeability. The California Appellate Court attempted to describe the school district obligation for forseeability as follows (445):

> It is not necessary to prove that every injury which occurred might have been forseeable by school authorities in order to establish that their failure to provide necessary safeguards constituted negligence, and their negligence is established if a reasonably prudent person would forsee that injury of the same general type would be likely to happen in absence of such safeguards . . .

In a 1967 New Jersey case (201) a child riding on a school bus was injured when struck in the eye by a paper clip propelled from a rubber band. The court held that the school "should have known of the propensity of children of this age to throw or propel objects endangering eyesight" (forseeability). The teachers had been instructed, but the bus drivers had not.

When a child picked up a paper bag at the request of a teacher and was cut by broken glass contained in the bag, a New York court ruled that the school district was not liable because the latent danger in the situation could not reasonably have been forseen by the teacher (433).

Accidents are the main source of tort liability to school districts. These most frequently involve students and, to a lesser extent, school employees and other users of the school district premises and facilities.

An analysis of school district negligence cases indicates that most accidents which result in claims are caused by:

1. failure to provide proper supervision.
2. hazardous conditions in buildings, doors,corridors, classrooms, gymnasiums and shops.
3. hazardous conditions on school grounds, improperly maintained playground equipment and appartus.
4. hazardous conditions involving walking to and from school, transportation of pupils in buses, other school vehicles and private automobiles.

Failure to provide proper supervision. The New York court attempted to put the suit of school districts in its proper perspective in a 1958 case in which it said (103):

> The board of education is in the same position as any other defendant being sued for its negligent acts of commission or omission and is only held to a reasonable standard of care. The board of education is only required to take those steps and adopt those procedures reasonably calculated to protect the safety of its students and personnel.

In making this generalization the court also cited Graff v. Board of Education of the City of New York (166), Fein v. Board of Education of City of New York (115), Miller v. Board of Education of City of New York (260), and Bertola v. Board of Education of City of New York (33).

In Lawes v. Board of Education of the City of New York the court affirmed its position on the degree of care required in supervision and attempted to define a "measure" of a school's responsibility for snowball throwing (230):

> It is unreasonable to demand or expect perfection in supervision from ordinary teachers or ordinary school management, and a fair test of reasonable care does not demand it.
>
> A reasonable measure of a school's responsibility for snowball throwing is to control or prevent it during recreation periods according to the best judgment of conditions, and to take energetic steps to intervene at other times if dangerous play comes to notice while children are within an area of responsibility.

However, two years later in another snowball case (78), the court found for the plaintiff who was injured by an iceball during an unsupervised noon recess period. The court said that in an area where a large group of children were playing and conditions made iceballs possible, supervision should have been provided. Justice Steuer, who had written the Lawes (230) opinion dissented and said, "The fact that fallen snow has partly turned to ice is not notice that ice is being thrown."

One of the concerns about the imposition of liability on school districts has been the possibility of having to close all playgrounds during off-school hours to safeguard against liability. A recent New York case sheds some light on how courts are reacting to this situation.

> No duty may be imposed upon the city school board to provide supervision over users of school playgrounds after school hours. This attempt by the defendant to help children to escape the perils of playing in the street did not burden it with the duty of supervision over the games played, or over the equipment which the participants themselves provided (26).

Rodrigues v. San Jose Unified School District (348) established in California that "there is no absolute rule as to number of pupils one supervisor may adequately oversee, nor is there any fixed standard of supervision. The question is one for the jury under the facts of the particular case." This opinion was developed in a case where considerable emphasis was placed on expert opinion as to the "ideal" span of control for a supervisor.

The previously quoted Woodsmall v. Mt. Diablo case also emphasized that". . . while the school district is required to exercise reasonable supervision over its students when school is in session, the law does not make the school district insurers of pupils at play or elsewhere" (445).

In the Sanchick case described on page 73, the court also commented, "In determining liability of the board of education for injuries to school children, all movements of pupils need not be under constant scrutiny(360).

In the Schyler case (366) an admonitory directive which banned walking on a fence railing constituted reasonable supervision. The railing was outside the play area and was properly constructed and maintained.

In Nestor v. Board of Education of City of New York (287), the board was held not liable for injuries sustained by a boy participating in a ball game called catch-a-fly. After hitting a high fly, the boy had run out to catch the ball and was struck by a bat wielded by another player who was swinging at the descending ball. The teacher supervising the playground was engaged in distributing milk at the time and did not blow the whistle to prevent the occurrence. The court reasoned that "the teacher supervising the public playground was not required to have under constant and unremitting scrutiny precise spots wherein every phase of play activity was being pursued, and general supervision was not required to be continuous and direct."

In the case of a six-year-old boy who died as a result of injuries suffered in a fall from a horizontal bar on blacktop playground, the court held that the education code requiring that "every teacher in the public schools shall hold pupils to a strict account for their conduct . . . . on the playgrounds" does not make school districts the insurer of the safety of pupils at play or elsewhere (445). The court quoted from Forgnone v. Salvador Unified Elementary School District (129), and said:

> It is true that mere lack of supervision or inadequate supervision may not necessarily create liability on the part of the school district to compensate for injuries sustained by the pupil. If it appears that a supervisor could not have reasonable anticipated or prevented the conduct of fellow students which resulted in injuries, it might not be material whether they were present at the time of the act complained of or not.

Similarly in Luna v. Needles Elementary School District (244), a claim was denied to a boy who hurt his hand in a gate because there was no evidence that the gate was defective or that the kindergarten teacher did not exhibit a standard of care which a person of ordinary prudence would exercise under the same circumstances.

A kindergarten class of twenty-five to thirty children was rehearsing on state for a school play in a drama which resulted in the case of Barbato v. Board of Education of the City of New York. The children had been instructed as to what to do, were well behaved, had had no prior falls or accidents. The teacher was at a piano a little below the stage, and while she glanced down at her keyboard, a child fell off the stage and was injured. Because the children had been instructed about what to do, were well behaved, and had had no prior falls, the board was found not liable (20).

Discipline cases were considered in this book as a part of the problems of supervision, although the legal activity they create might well justify a separate category. "Reasonableness" again is the key concept.

In 1967 the Appellate Court of Louisiana held that teacher action in lifting, shaking, and dropping a boy was in excess of the physical force necessary and subjected the teacher and the board to liability. The court felt it necessary to add (130):

> We expressly refrain from making any judicial pronouncement as to whether it is actionable per se for a teacher in a public school to place his hands on a student.

New Jersey has a "save harmless" law, discussed in more detail on page 38, Chapter II, of this book, which requires school districts to indemnify teachers and staff from financial loss resulting from claims and judgments by reason of negligence in the line of duty. In a recent case of Titus v. Lindberg, a boy, Titus, was struck and injured by a paper clip propelled by a rubber band in the hands of another student, Lindberg. The accident occurred about 8:05 a.m. Lindberg was not a student at the school where the accident occurred, but was at a designated transfer point, waiting for a bus to take him to the school in which he was enrolled. The school doors did not open until 8:15, but students at that school began arriving at about 8:00. It was the principal's practice to arrive at 8:00, supervise delivery by the milk truck, and then walk through the halls of the building or walk outside the building. On the day of the accident he was walking in the hallways.

The court held that both the boy (Lindberg), the principal and the school district were liable in that "under the evidence the jury could find that no rules or regulations had been promulgated, no supervisory personnel had been assigned to the area, no guidelines had been given to the coordinator of transportation or the principal, and no checkups had been made." One-half of the judgment was borne by Lindberg and the other half was shared equally by the principal and the board of education.

A 1963 New York decision held that a teacher in charge of a class of mentally retarded children had a duty to supervise the class. The fact that other duties prevented him from supervising that class at the time of an accident was held relevant to his duty, but not to that of the board, and the board was held liable for the accident (163).

In a New York case the board was held responsible for negligent supervision of a baseball game when it allowed spectators to push a bench into a dangerous position near the third base line where it caused a player to be injured (105).

Also in New York, a twelve-year-old student in a physical education class was required to participate in a game which involved dividing the class into two lines of boys facing each other about twenty-five feet apart. On the call of a number, one boy from each line would run forward and attempt to be the first to kick a ball placed down between the lines. No attempt was made to match the boys according to height and weight. The board of education was held liable for the injuries sustained by a small boy who was kicked in the head (56).

Previously cited cases indicate that New York courts generally do not hold school districts liable for ordinary play accidents on playgrounds during non-school hours. The case of Lam v. Board of Education, Central Union School District, 278 NYS (2d) 264 (1965) was an exception. In this case a "new" area was being cleared for use by the school, and the trees and brush had been piled and burned, leaving hot coals smouldering under cooler ashes. The presence of children playing in this area was known, but ignored. When one of them was burned, the school board was held liable, and the court differentiated from the previous decision mentioned by saying:

> The degree of care required is commensurate with the risk involved depending upon such circumstances as the dangerous character of the material and its accessability to others, particularly children whose presence should have been anticipated regardless of whether or not they are trespassers.

In the case of Lilienthal v. San Learndro Unified School District, a teacher of a metals class had moved the pupils outside because of construction noise in the building. One pupil was repeatedly playing with a knife, sticking it into the ground. When it struck another's drawing board, it was deflected into the eye of still another pupil. The court held the teacher and district liable for failure to provide adequate supervision and stop the knife throwing activity.

In California, a janitor left in control of the children was considered to be "one without training, skill or experience,"and supervision was adjudged inadequate (150).

In San Francisco, one teacher was ruled inadequate for the supervision of 150 children of various ages (173).

Hazardous Conditions in Buildings, Doors, Corridors, Classrooms, Gymnasiums, and Shops. "Reasonable care" would not allow a piano to tip so easily that a non-school-employee "bluebird" leader could tip the piano and injure children. So ruled the court which held the school district responsible for the accident (218).

However, when a junior high pupil was hit in the head by a crank on the gear box of a screen in an auditorium, the board of education was ruled not negligent and not liable for his death. The court found that this gearbox had been widely used in New York without incident and that the school district could, therefore, not be expected to "forsee" the accident (209).

In a similar decision, the New York court also held that the use of a stairway without incident over a long period of time barred a claim of defective construction (271).

In the kindergarten case cited on page 81 of this chapter, the board was not held liable for "maintaining a dangerous condition," when a child fell off the auditorium stage.

Hazardous Conditions on School Grounds, Improperly Maintained Playground Equipment and Apparatus. Possibly because of increased awareness of the need for playground safety, and possibly because the New York and California courts have consistently held that the schools are not "the insurer of the safety of pupils at play or elsewhere" (445), the number of appellate cases related to maintenance of school grounds and play equipment in the past ten years is comparatively small.

If the play equipment is not inherently dangerous and is well maintained, then the fact that a child is hurt playing on it does not render the school district liable.

If the child is hurt as a result of the manner in which he and others are playing, or if he is hurt by another child on the equipment, then the issue becomes one of proper supervision, a factor which was dealt with earlier in this chapter.

For example, in the Luna v. Needles Elementary School District case (244), the kindergarten pupil hurting his hand in a gate which was not defective and which was well maintained, did not render the district liable for his injuries.

Schools generally are not liable to theatrical groups using their premises because the later are regarded as licensees rather than invitees (205).

Hazardous Conditions Involving Walking To and From School, Transportation of Pupils in Buses, Other School Vehicles and Private Automobiles. In general, school districts are not required to assume responsibility for the safety of pupils while they are walking to and from school. This is illustrated by the recent case of Gilbert v. Sacramento Unified School District where the school district was held not liable for the death of a girl who was struck and killed on a railroad tract on her way home from school (159).

The Illinois Appellate Court also held that the school did not owe a duty to a child to protect her from injury while walking from her home to the bus stop, and further, was not under a duty to route the bus so that no child using the bus would be required to cross the highway (328).

A 1963 Maryland case held that where their state law required the bus driver to supervise the child's crossing of the street, he fulfilled that duty by permitting the child to leave the bus in company of a responsible student who was a member of the safety patrol. In the same case the court applied the test of "forseeability" and held that the driver was not under a duty to forsee that a motorist would cut around three standing cars at high speed and run the child down (332).

Kerwin v. San Mateo County reinforced the general holding that the California statutes " . . . did not impose a duty on the teacher or the school district to supervise pupils on their way home" (217).

In another California case, Wright v. Arcade School District, the school district was held not liable for the alleged failure to provide a school patrol at a busy intersection where a five-year-old boy was struck and injured. The court ruled, "It is not a tort for the government to govern, and those governmental decisions within the scope of delegated powers are non-tortious" (447).

Where a junior college student operated a vehicle offof the school grounds the court held that the liability of the district was not limited to the school grounds,and they were responsible for his negligence (231).

It may be said that courts are quite rigorous in holding school districts responsible in school bus cases if established safety rules are not followed. For example, in 1967, the New York Court said, "If the driver doesn't follow safety rules in pupil discharge, absolute liability is imposed" (420).

The degree of care required with children in school busing operations was described by the Louisiana Appellate Court as follows (228):

> . . . highest reasonable and ordinary care, with knowledge that small children cannot be expected to exercise the same judgment as adults.

III. POLICIES TO MINIMIZE LIABILITY

In an analysis of the accident data in Appendix F and the case data in this chapter,two phenomona stand out. First, most accidents and most claims are generated in the physical education and recreation areas. Secondly, failure to supervise is by far the most frequently claimed cause of these accidents. In the California study, it was considered a factor in 80 per cent of the cases (202).

School districts are not required to have a supervisor continuously present at all times to meet the requirements of "reasonableness," but it is very nearly an absolute must in places of predictable special hazard such as physical education, shop, or certain types of special education classes. "Forseeability" is probably the most important test of liability.

For example, if a group of children are otherwise orderly, and a casual one-time-only push results in an accident, the teacher and school district will probably not be found guilty of negligence. This is true whether the teacher is present or not for the reason that the accident might very well have occurred even if the teacher had not been there. On the other hand, if the teacher is present and a child who persists in dangerous horseplay or other potentially accident-producing activity is ignored by the teacher, the teacher and district will probably be liable for injury from any accident that occurs.

Gathering points for idle students such as bus loading areas are potentially dangerous and probably should be supervised because of the amount of horseplay that takes place. This is particularly true with boys for they have twice as many accidents as girls (see Appendix).

"The degree of care required is commensurate with the risk involved," and special care is required with special apparatus for physical education and particularly dangerous machines in industrial arts. The fact that proper procedures have been taught and that a safety program exists is considered strong evidence for the districts' non-negligence claim if an accident does occur (254).

In states where immunity has been abrogated, it would appear that trends of liability and accident prevention programs are well enough established so that appellate level cases regarding injuries resulting purely from faulty care and maintenance of buildings and grounds are diminishing. It is a fairly well-established fact that buildings, grounds, and equipment must be in good repair to avoid negligence charges. It is also fairly clear that if such facilities are in good repair and not inherently dangerous, a school district will not be held liable for negligence in case of an accident involving the use of those facilities in reasonably controlled situations.

In general, school districts have not been held responsible for the safety of children walking to and from school. However, pupils who are transported by the school do enjoy considerable protection, and the degree of care required is high, both in terms of protecting the child from other vehicles, and from injury from other pupils while on the bus.

In view of recent legal experience, the following seven policy areas would seem to merit school board consideration:

1. Development. A number of very fine specialized research studies, beyond the range of this book, have been developed in some of the key areas such as physical education (223), (384), (11), (419), and industrial arts (219). It should be incumbent on these departments in the schools, whether they are one-teacher or multi-teacher departments, to utilize the available research in developing written accident prevention and safety programs for board action. Playground accidents, the most frequent accident category for elementary students, also merit study by the elementary staff. As many areas of the school organizational structure as possible should be involved in the development of the safety and accident prevention program. This will help to assure maximum support for the program once adopted by the board of education.

2. Coordination. It would seem advisable for every school district to have one person responsible for coordinating a safety and accident prevention policy within each district. Such an assignment could range from a full-time position in larger districts to an "additional duty" of the superintendent in a very small district. It would entail coordinating the written safety and accident policy established by board action.

3. Reporting. The state accident prevention and safety program should encompass an effective reporting system, preferably in the format used by the National Safety Council, in the interests of encouraging nationally consistant student accident reporting. An annual analysis of the accident reports should be made each year along with claims filed, if any, and the status of claims filed in

previous years. The results of this analysis should be used for modification of the accident prevention and safety program. A copy of recent student accident experience as reported by the National Safety Council is included as Appendix G.

4. Safety Inspection. In a California study, William A. Jacobs (202) indicated that the number of claims against a school district could be reduced by eighteen per cent by providing a system-wide and periodic safety inspection of the school grounds and facilities. A copy of Jacobs' recommended inspection outline is included as Appendix G.

5. Preparation for Emergencies. Expeditious handling of accidents will lessen the danger and pain to the individuals involved and will often lessen the liability of the employee and school district. It would be desirable to have at least a third of the entire school staff trained in basic first aid; all staff in vulnerable areas, such as physical education and industrial arts, should be trained. School policies in the event of accident should be reviewed regularly so that all staff members are aware of them. An emergency card should be maintained on each student and employee, listing all pertinent data, such as where a parent or relative can be reached and the name of the family doctor.The card should be dated and signed by the parent or employee, along with a statement making him responsible for keeping the card up-to-date. First aid equipment in readily accessible locations is a necessity.

6. Adequate Supervision. As was stressed earlier in this chapter, the adequacy of supervision is one of the most litigated causes of school accidents today. Although the absence of a supervisor at the time of an accident does not always render a school district liable for negligence, there appear to be certain types of situations where the presence of a supervisor is important. These situations include (a) special hazard locations such as physical education and shop apparatus and machines, and certain types of special education classes (163); (b) locations where the pupils are involuntarily gathered together for the convenience of the school district; these locations might include elementary children being sent out on the playground during the lunch hour, children temporarily waiting on one school location for a "shuttle" to another school; children

waiting to catch a bus home, children gathered at school in the morning waiting to get in, or children going home on a large unsupervised school bus (201). These kind of juvenile conglomerates seem to produce a disportionate number of accidents resulting in court litigation. Therefore it would seem a district sincerely interested in accident prevention and liability mitigation should make an effort to provide supervision at these key places. Cost is a factor of course. However, subject to interpretation of the various state statutes, the supervisor need not be a certified teacher. While noncertified school employees or older pupil monitors could not be expected to fulfill the same function in supervision as a teacher, if well trained they can become an asset to the program, and assist considerably in the reduction of accidents and liability, without the high cost of utilizing certified classroom teachers for bus loading and pre-entry types of supervisory activity. The subject of teacher aides and assistants in their relationship to pupil supervision still has some unanswered legal questions. However, if school districts have given special training for the specified activity, some courts have been willing to accept this kind of supervision as evidence of non-negligence (436).

Usually, and inevitably in a large school situation, supervisors must be supervised. If the school district, in the interests of safety, establishes a certain pattern of supervision and the pattern is broken, the implications of negligence on the part of the school district are quite strong. It therefore becomes imperative that supervisors be at the appointed place at the appointed time.

Where safety rules and regulations have been promulgated, the teacher does pupil safety and district liability a great service if he takes pains to explain the rules thoroughly and make sure the pupils understand those rules. If a pupil is injured in an accident where he has violated previously stressed rules, the legal status of the district is much different than if the rules have never been explained to him (404), and, (254).

Finally, the teacher who observes a potentially dangerous situation or behavior on the part of the pupil, such as paper clip or BB "shooting", iceball throwing, sticking of knives, improper use of tools, improperly matched contestants or fighting, has an obligation to do something about it. Outbursts of juvenile energy which result in an accident can be tolerated by the courts, but if a supervisor observes dangerous activity and allows it to continue, the courst have been quite firm in holding the teacher and the school district, if not immune, liable (236).

7. Handling of Claims. As a part of the policy and reporting system described in paragraphs 1-3 of this section, there should be a uniform policy for handline claims against the school district.

First, every accident report should be regarded as a potential source of a claim, should be meticulously completed, and kept on file. Records should remain on file at least as long as the state statute of limitations for filing claims stipulates and preferably for five years. A five-year period would permit systematic study of accident trends and re-evaluation of accident prevention policies.

School officials and administrative personnel should be knowledgeable about the statutory claim requirements in their state so that no technical errors are committed on their part which might later embarrass the school district in court.

Although many insurance companies prefer to use their own claim forms, it would seem desirable in a state which had abrogated immunity, that the state prepare a standard claim form which could be required in the law to be completed in quadruplicate. One copy could be retained by the claimant, one copy by the district, one by the insurer, and one by the health and safety section of the state department of education. This would permit compilation of claims data by which trends in claims and insurance costs might be predicted. The accident prevention and safety coordinator described previously would process all claims, thus assuring a degree of consistency. Before acceptance or rejection of a claim, the school attorney, legal counsel, or the attorney for the insurance company should render an opinion on the validity of the claim.

In summary, seven policy areas seem to merit board of education consideration:

1. development of policies based on available research
2. coordination of established safety policies
3. prompt and accurate accident reporting
4. safety inspection
5. preparation for emergencies
6. adequate supervision
7. uniform handling of claims

CHAPTER V

GENERAL LIABILITY INSURANCE FOR SCHOOL DISTRICTS

In the volatile circumstances surrounding government tort liability, it is not unexpected that the field of insurance coverage for tort liability exposure is lacking clear-cut dimensions. The various state positions on the subject range from requiring school districts to purchase insurance (California) to regarding it as ultra vires (South Carolina). In South Carolina the school district does not have the power to purchase the insurance, and, if they do so, the injured party may not collect and the school district may, upon request, demand return of premiums paid.

For the purposes of this book, Wherry's definition of insurance was accepted (437), "We can define insurance as a pooling arrangement to transfer the burden of loss." Wherry goes on to say:

> Transfering a loss by insurance does not decrease the loss. In fact, insurance increases the cost of losses to society, since making the transfer of the burden of loss, which is the function of a working insurance organization, is expensive.

Wherry also observes, however:

> The insurance industry has, in spite of the cost to society, persisted, developed and even grown. It has proved to play a major part in the affairs of today's society. Its magnitude and diversity apparently have satisfied consumer desires, for consumers have paid the premiums that caused the vast growth in the industry. We can safely infer therefore, that insurance affects our lives personally, socially, and economically.

Insurance has, indeed, been a major factor in the consideration of the school district tort liability question. Several courts have referred to it specifically in abrogation decisions The Illinois court said of the state statute which permitted school districts to carry transportation liability insurance:

> We interpret that section as expressing dissatisfaction with the court-created doctrine of governmental immunity, and an attempt to cut down that immunity where insurance is concerned.

A Minnesota district court also referred to insurance in the Williamson case saying (411):

> With respect to questions of the ability of school districts to pay for liability insurance and to ascertain what insurance rates would be, the Court is of the view that there is no question that school districts have the legal capacity to pay for whatever liability insurance they feel is necessary, but that the Legislature acted reasonably in continuing the immunity for school districts in order to give them an opportunity to study and determine what practical capacity they had to finance the cost of insurance premiums. Further, it was reasonable to give them time to ascertain (a) what insurance rates would be if all school districts were subject to liability and (b) whether insurance would be available under a system of non-immunity.

General liability insurance for school districts is now being sold in every state in the union (378), and in at least eight states, abrogation of immunity up to the amount of the insurance is permitted. These states are in addition to those who have completely or partially abrogated immunity through statute or court decision. Even in some states where a school district's immunity is still maintained by law, it is circumvented by another statute which permits the injured party to collect directly from the insurance company, thus protecting the "public" funds (13).

Wood (444) found that in Michigan, school administrators tended to rely heavily on their insurance coverage for liability protection although they were often not fully cognizant about their exposures or coverages.

With insurance being a major factor in the consideration of school district liability, it was included for special consideration in this book, and specifically, in this chapter. The sections into which this topic was divided are as follows:

I. Insurance Rates and Rate-Making

II. Characteristics of Minnesota Schools Carrying General Liability Insurance

III. Rate and Claim Experience of Reporting Minnesota Schools carrying General Liability Insurance

IV. Rate and Claim Experience of Reporting Selected Out-of-State Schools Carrying General Liability Insurance

V. Summary

I. INSURANCE RATES AND RATE-MAKING

Insurance premium rates in all states are regulated by a state board or commission, either appointed or elected (437). No insurance company is authorized to sell insurance in a given state unless it has submitted its rates and has been approved by the state insurance commission.

As a practical matter, rather than developing their own rates based on experience and research, most companies either join or subscribe to services from an insurance rating organization. The three rating organizations with whom companies writing insurance in Minnesota would be most apt to work would be: The Insurance Rating Board (formed through the recent consolidation of the National Bureau of Casualty Underwriters and the National Automobile Underwriters Association), the Mutual Insurance Rating Bureau, and the Multi-Line Insurance Rating Bureau.

The Insurance Rating Board, which traces its history back to 1910, identifies itself in its current descriptive publication as providing four principal services:

1. Rating services for board members, associate members, and subscribers;
2. Statistical services for board members, associate members, subscribers, and for independent companies that may wish to purchase this service, and to designate the Insurance Rating Board as statistical agent

in accordance with the state rate regulatory requirements;

3. Development of manuals for board members, associate members, subscribers, and for independent companies that may wish to purchase that service;
4. Development of standard provisions for policies and endorsements for board members, associate members, subscribers, and for independent companies that may wish to purchase the service.

Membership in the Insurance Rating Board (hereinafter referred to as IRB) is open to capital stock insurance companies. There are two types of memberships:

1. A company is eligible to be a board member in IRB if it belongs to IRB for all lines of insurance written by the company and handled by IRB and for all states and territories in which IRB is authorized to act and in which the company is licensed to do business.
2. A company may be an associate member if it belongs to IRB for at least one line of insurance in all states and territories in which IRB is authorized to act, and in which the company is licensed to do business.

In addition to the two classes of membership in IRB, any insurer--stock, mutual, or reciprocal--writing any line or kind of insurance handled by IRB may become a subscriber to the rating services of IRB in one or more states. This provision is a requirement of state law. Minnesota Statutes 70.40 (1965) which provide for the licensing of rating organizations require the rating organization to provide for subscription services as well as membership.

After filing of rates by the rating organization on behalf of its members and subscribers, the law requires that members or subscribers adhere to those rates, "except that any such insurer may make written application to the commissioner to file a uniform percentage increase or decrease to be applied to the premium produced by the rating system" (437). "The law also describes the procedure for rate change in which a hearing is held to determine the appropriateness of the deviation requested. Participating in the hearing are the insurer, the commissioner of insurance, and the representative(s) of the rating organization."

The assistant manager of the Chicago office of the Insurance Rating Board, Mr. R. Stanley Smith, was interviewed by the author. According to Mr. Smith, deviation requests are rare in school liability lines and are seldom opposed by the rating organization. Exceptions noted by Mr. Smith might be "gimmick rating schemes tending to develop premium and loss data unusable under rating bureau statistical plans" (378).

IRB, according to Mr. Smith, tends to regard itself as a "scorekeeper" which collects claim data from its member and subscriber companies and from its own research. It then transposes this data into insurance rates in the various states.

The insurance commissioners of the various states make the final decision on what the rates will be. The function of the rating organization,in obtaining rate change, is to present sufficient documentary evidence to the commissioner to convince him of the need for change.

From the member companies and from some subscriber companies the insurance rating organizations collect data which, according to Wherry includes:

1. claim frequency
2. average claim costs
3. pure premium
4. loss ratio (the per cent of premium represented by the loss)

From the above data, and from the information collected by their research department, the rating organizations compute rates which contain provisions for:

1. losses (claims) including the expenses of loss adjustment
2. expenses of selling, underwriting, servicing, and maintaining necessary records in connection with contract and for state premium taxes. (These are reviewed in the light of expense data supplied by the National Association of Insurance Commissioners)

3. reasonable allowance for underwriting profit and contingencies.

"The objective of casualty ratemaking," says Wherry (437), "is to establish rates that will be adequate for claims and expenses during that period in which such rates are to apply. The ratemaking process should not be used, for example, to recoup past underwriting losses, however large they may be." Mr. Smith adds, "It is not used to recoup past losses" (378).

In trying to estimate "contingencies," the research and legal department of the rating organizations also consider recent court decisions in the various states, statutory changes by the legislatures, trends in cost of living, and amount of claims in the period for which rates are being developed.

Rate-making is further complicated by the fact that in liability lines, as compared to straight property fire insurance, claims are not always reported promptly, and it is more difficult to determine whether the insured is liable. At any statement date,there are a large number of unliquidated losses for which liability must be carried. These can be categorized as follows:

1. specific claims in process of adjustment
2. claims incurred, but not reported
3. miscellaneous contingencies--latent occupational diseases, reopened cases, new court decisions effects of inflation, etc.

In practice, their research departments have some of the same communications problems that confront educators, such as having to determine from court testimony whether the psychologist's reference to"practical negative reinforcement" really meant spanking the child (178). Even with the help of modern-day computers, the business of ratemaking is, according to Mr. Smith, "something more of an art than a science" (378).

After a rating change proposal, made by the rating organization on behalf of its members and subscribers, has been accepted by the state supervisory authorities, the supply department of the rating organization prepares the rate changes and distributes them to all its member and subscriber companies.

The activities of the two other previously mentioned rating organizations are not sufficiently dissimilar to the IRB to warrant individual and detailed discussion. Only one distinguishing and specialized function for each is noted here: the Mutual Insurance Rating Bureau deals almost exclusively with insurance companies organized as mutuals; the Multi-Line Insurance Rating Bureau specializes in "packaged" insurance.

Most insurance laws provide that a firm which does not belong to or subscribe to the services of a rating organization may provide evidence and file its own rates with the state insurance commissioner. As indicated earlier, in the liability field this is seldom done.

Deviation from the established rates, however, is not uncommon. The usual reasons for a request to the commissioner for deviation by an insurance company are (437):

1. experience: The loss experience of the insured is so good or so bad that the "manual" rates do not apply. This type of rating is usually available only to sizeable exposures.
2. schedules: Under this plan, the insured agrees to adopt or continue certain strict safety plans, procedures, etc., and on this basis, a reduced rate is requested.
3. retrospective: under this plan, the insured agrees to pay a relatively high premium, with the understanding that if the experience is good, there will be a refund. Often, this refund is based on a previously agreed upon "retention" by the company of a certain percentage of the difference between the claims and premium payments

In some states, for reasons not readily explainable by actuaries, insurance claims and jury awards in liability cases tend to be significantly higher than claims and awards for similar accidents in other states. In these states rates on almost all lines of insurance will be higher. New York is an example of such states. In the upper Midwest, Minnesota rates are above those of most of its neighbors (Table I, p.102).In the insurance industry, these states are sometimes referred to as "socially-minded states" (378).

In many states, particularly those that contain both large metropolitan areas and rural areas, claim experience is such that different sets of rates are developed for different areas of the state. Probably the most extreme case would be the relatively small state of New Jersey which has eleven rate areas.

Minnesota is divided into three rating areas which are as follows:

1. Rate Area 1: Minneapolis and St. Paul territory is comprised of the entire city of Minneapolis in Hennepin County and the entire city of St. Paul in Ramsey County, the Fort Snelling and International Airport areas, and all of the following municipalities in Hennepin County:

    Bloomington
    Brooklyn Center
    Crystal
    Edina
    Hopkins
    New Hope
    Richfield
    Robbinsdale
    St. Anthony
    Golden Valley
    St. Louis Park

    all of the following municipalities in Ramsey County:

    Falcon Heights
    Lauderdale
    Little Canada
    North St. Paul
    St. Anthony
    Maplewood
    Mounds View
    New Brighton
    Roseville

    all of the following municipalities in Dakota County:

    Lillydale
    Mendota
    West St. Paul
    Mendota Heights
    South St. Paul

    all of the following municipalities in Washington County:

    Newport
    St. Paul Park

2. Rate Area 2: Remainder of state, except;

3. Rate Area 3: Duluth; territory comprising the entire city of Duluth in St. Louis County.

School liability rates are included in the "Owners, Landlords, and Tenants" classification of the casualty insurance rating manual. The categories selected for inclusion in this report are as follows (409):

Code 0323s: Schools--parochial--excluding stadiums, or outdoor grandstands or bleachers--permanent or portable--per pupil

Code 0324s: Schools--elementary, kindergarten or junior high--public--excluding stadiums, or outdoor grandstands or bleachers--permanent or portable--day sessions--per pupil

Code 0335s: Schools--high or junior colleges--public--excluding stadiums, or outdoor grandstands or bleachers--permanent or portable--day sessions--per pupil

Code 336s: Schools--manual training, trade or vocational--public or private--including automobile schools giving instruction in repair, assembly or construction of motors or bodies--excluding stadiums, or outdoor grandstands or bleachers--permanent or portable--day sessions--per pupil

Code 336s: Stadiums, or outdoor grandstands or bleachers--permanent or portable--operated by colleges or schools--all undertakings operated by insured--per 100 admissions

Code 0395s: Stadiums, or outdoor grandstands or bleachers--permanent or portable--operated by colleges or schools--receipts (excluding admission and seat charges)--per $100 of receipts

The basic per pupil rates quoted for the various states in Table I, pp. 102-103 , are based on a policy which would provide claim payments up to $5,000 per individual,

TABLE I

HIGH AND LOW SCHOOL DISTRICT LIABILITY INSURANCE RATES IN ALL STATES

Codes (See Page 178 For Code Description)

	No. of Areas	0323s		0324s		0335s		0336s		0308s		0395s	
		High	Low	High	Low	High	Low	High	Low	High	Low	High	Low
Alabama	2			.11			.07			.29	.14	.31	.15
Alaska	1	.08	.08	.10	.10	.12	.12	.39	.39	.26	.26	.38	.38
Arizona	1	.15	.15	.19	.19	.32	.32	.63	.63	.26	.26	.38	.38
Arkansas	1	.07	.07	.09	.09	.14	.14	.34	.34	.13	.13	.14	.14
California		.18	.18	.32	.16	.51	.27	.51	.51	.53	.29	.86	.36
Colorado	2	.11	.07	.13	.09	.17	.14	.47	.34	.17	.14	.18	.15
Connecticut	8	.44	.22	.55	.27	.88	.49	1.90	.84	.44	.35	.75	.58
Delaware	1	.07	.07	.08	.08	.12	.12	.33	.33	.20	.20	.28	.28
Dist. of Col.	1	.14	.14	.14	.14	.14	.14	.75	.75	.32	.32	.34	.34
Florida	3	.17	.12	.18	.14	.18	.18	.79	.55	.29	.19	.42	.30
Georgia	2	.09	.07	.11	.07	.12	.07	.45	.37	.18	.13	.22	.14
Hawaii	1	.07	.07	.09	.09	.12	.12	.35	.35	.17	.17	.24	.24
Idaho	1	.07	.07	.08	.08	.13	.13	.34	.34	.10	.10	.11	.11
Illinois	3	.21	.19	.26	.24	.35	.35	1.10	.97	.48	.27	.52	.29
Indiana	4	.12	.10	.14	.11	.23	.18	.48	.38	.36	.26	.47	.30
Iowa	1	.08	.08	.10	.10	.12	.12	.38	.38	.14	.14	.17	.17
Kansas	2	.08	.045	.11	.06	.12	.09	.42	.23	.15	.13	.19	.14
Kentucky	2	.08	.049	.10	.06	.14	.07	.42	.25	.26	.12	.28	.13
Louisiana	2	.20	.08	.21	.11	.21	.17	.99	.42	.39	.28	.45	.30
Maine	1	.07	.07	.09	.09	.12	.12	.37	.37	.15	.15	.19	.19
Maryland	3	.14	.09	.17	.11	.28	.18	.69	.46	.26	.23	.30	.27
Massachusetts	8	.10	.04	.12	.049	.20	.08	.49	.23	.53	.32	.56	.34
Michigan	2	.12	.08	.12	.09	.12	.09	.62	.42	.26	.18	.30	.21
Minnesota	3	.17	.16	.21	.20	.33	.32	.85	.60	.22	.15	.26	.19

TABLE I (continued)

	Areas	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low
Mississippi	1	.07	.07	.08	.08	.11	.11	.29	.29	.10	.10	.17	.17
Missouri	3	.15	.11	.18	.13	.27	.17	.74	.54	.49	.24	.53	.25
Montana	1	.08	.08	.10	.10	.16	.16	.41	.41	.16	.16	.17	.17
Nebraska	2	.036	.036	.09	.036	.12	.06	.14	.14	.18	.08	.32	.14
Nevada	1	.10	.10	.12	.12	.20	.20	.49	.49	.16	.16	.23	.23
New Hampshire	1	.17	.17	.21	.21	.26	.26	.86	.86	.38	.38	.43	.43
New Jersey	11	.12	.12	.16	.16	.16	.16	1.24	.54	.39	.19	.93	.41
New Mexico	1	.06	.06	.06	.06	.10	.10	.25	.25	.15	.15	.16	.16
New York	10	.58	.20	1.50	.51	1.60	.61	1.90	.76	1.70	.35	1.00	.38
North Carolina	1	.04	.04	.048	.048	.08	.08	.20	.20	.12	.12	.12	.12
North Dakota	1	.046	.046	.06	.06	.08	.08	.23	.23	.10	.10	.11	.11
Ohio	7	.14	.06	.18	.09	.21	.09	.57	.35	.33	.21	.37	.24
Oklahoma	3	.14	.08	.14	.08	.15	.12	.54	.33	.19	.13	.34	.25
Oregon	2	.10	.10	.13	.13	.21	.21	.51	.48	.27	.14	.29	.16
Pennsylvania	9	.18	.048	.14	.06	.22	.10	.80	.24	.50	.14	.57	.19
Rhode Island	3	.10	.08	.12	.10	.12	.12	.51	.38	.35	.20	.40	.21
South Carolina	1	.045	.045	.05	.05	.07	.07	.21	.21	.11	.11	.12	.12
South Dakota	1	.05	.05	.07	.07	.07	.07	.26	.26	.12	.12	.14	.14
Tennessee	2	.09	.08	.09	.09	.09	.09	.58	.40	.27	.23	.30	.24
Texas	6	.07	.041	.09	.05	.12	.08	.37	.20	.21	.11	.23	.15
Utah	1	.07	.07	.09	.09	.14	.14	.35	.35	.15	.15	.18	.18
Vermont	1	.11	.11	.14	.14	.14	.14	.55	.55	.21	.21	.24	.24
Virginia	4	.07	.048	.07	.06	.07	.07	.40	.24	.14	.11	.15	.12
Washington	2	.11	.10	.14	.13	.22	.20	.55	.50	.21	.20	.29	.27
West Virginia	1	.06	.06	.06	.06	.06	.06	.26	.26	.11	.11	.21	.21
Wisconsin	4	.21	.14	.23	.15	.35	.24	.87	.59	.30	.21	.32	.27
Wyoming	1	.036	.036	.044	.044	.07	.07	.17	.17	.11	.11	.12	.12

TABLE II

SCHOOL DISTRICT PROPERTY DAMAGE RATES
(See Page 178 for Code Descriptions)

Classification Code	All States Except New York	New York
0323s	.005	.005
0324s	.006	.01
0335s	.006	.01
0336s	.02	.025
0308s	.02	.025
0395s	.02	.025

TABLE III

INCREASED LIMITS OF LIABILITY

BODILY INJURY

Limits of Liability	Factors
$ 5,000/ 10,000	1.00
10,000/ 20,000	1.26
25,000/ 50,000	1.49
50,000/100,000	1.58
100,000/300,000	1.71
300,000/300,000	1.75

PROPERTY DAMAGE

$ 5,000	1.00
10,000	1.09
25,000	1.16
50,000	1.26

and $10,000 per occurrence, where the school district was considered or adjudged liable. For higher insurance limits, the rates are increased, based on a factoring system. The factors are shown in Table III on page 104.

To illustrate the application of the preceding tables, School District No. 3 (page 116) might have had its insurance rates computed as follows:

822 elementary & Jr. high pupils	@ ($.16 x 1.71) =	$224.80
293 senior high school pupils	@ ($.32 x 1.71) =	157.40
1115 pupils(total)	@ ($.006) =	6.69
4000 admissions	@ ($.15/100) =	(min.)50.00
$600 non-admission rentals	@ ($.19/$100) =	" 50.00
	Subtotal:	$488.89
professional liability insurance for nurse		?
other factors		?
total liability insurance cost		$798.00

According to Smith(378),while rates are based primarily on the collection of data on premiums and claims, experience has shown that claims do tend to increase when immunity is liberalized either by court action or statute change. Hence, the rating organizations will usually try to appraise what the changes mean and request a rate change on that basis. Regardless of the amount of change requested, a twenty-five per cent increase is the maximum amount ordinarily allowed by state insurance commissions at any one time. "If" said Smith, "subsequent experience shows that the amount of rate change was not justified, a lowering of rates may then be requested."

Table IV,p.106 displays the changes that have occurred in rates of the 0324 (kindergarten-elementary-junior high school) classification of liability experience over an eight-year period from 1960 to 1968.The average rates were computed as an average of all rate areas in each state. (Appendix H).

With the exception of New York, all states listed as "abrogated" incurred a major reduction in the tort immunity enjoyed during this period. The increase in the average rate for all of these states was 22 per cent. This was 48 per cent less than the 70 per cent increase of the non-abrogated states.

TABLE IV

LIABILITY RATE HISTORY—ABROGATED V. NON-ABROGATED STATES
(Code 0324 Only)

(Kindergarten, Elementary, and Junior High School Pupils)

	0324 1968 Rates			0324 1960 Rates			Per Cent Increase		
	High	Low	Av.	High	Low	Av.	High	Low	Av.
Abrogated States:									
Arizona	.19	.19	.19	.06	.06	.06	217	217	217
California	.32	.16	.27	.33	.33	.33	-3	-50	-18
Connecticut	.55	.27	.46	.48	.30	.39	14	-10	18
Hawaii	.09	.09	.09	.03	.03	.03	200	200	200
Illinois	.26	.24	.25	.11	.11	.11	136	118	127
Iowa	.10	.10	.10	.05	.05	.05	100	100	100
Massachusetts	.10	.04	.08	.20	.06	.13	-50	-33	-38
Nevada	.12	.12	.12	.12	.12	.12	0	0	0
New Jersey	.16	.16	.16	.09	.09	.09	78	78	78
New York	1.50	.51	.85	1.16	.70	.88	29	-27	-3
Oregon	.13	.13	.13	.04	.04	.04	225	225	225
Utah	.09	.09	.09	.06	.06	.06	50	50	50
Washington	.14	.13	.14	.10	.10	.10	40	30	40
Wisconsin	.23	.15	.18	.16	.09	.13	43	67	38
Average	.28	.17	.22	.21	.15	.18	33	11	22
Median	.15	.14	.17	.10	.09	.10	30	36	38
Non-Abrogated States:									
Alabama	.11	.06	.09	.08	.03	.06	38	100	50
Alaska	.10	.10	.10	—	—	—	—	—	—
Arkansas	.09	.09	.09	.08	.08	.08	13	13	13
Colorado	.13	.09	.11	.08	.08	.08	63	13	38
Delaware	.08	.08	.08	.03	.03	.03	167	167	167
Dist. of Col.	.14	.14	.14	.06	.06	.06	133	133	133
Florida	.18	.18	.18	.04	.04	.04	350	350	350
Georgia	.11	.07	.09	.05	.03	.04	120	133	125
Idaho	.08	.08	.08	.06	.06	.06	33	33	33
Indiana	.12	.11	.12	.08	.08	.08	50	38	50
Kansas	.11	.06	.09	.04	.04	.04	175	50	125
Kentucky	.10	.06	.09	.06	.06	.06	67	0	50
Louisiana	.21	.11	.16	.03	.03	.03	600	266	433
Maine	.09	.09	.09	.05	.05	.05	80	80	80
Maryland	.17	.11	.14	.17	.09	.13	0	22	8
Michigan	.12	.09	.11	.04	.03	.04	200	200	175
Minnesota	.21	.20	.21	.17	.17	.17	23	18	23

TABLE IV (continued)

	0324 1968 Rates			0324 1960 Rates			Per Cent Increase		
	High	Low	Av.	High	Low	Av.	High	Low	Av.
Non-Abrogated States (cont.):									
Mississippi	.08	.08	.08	.08	.08	.08	0	0	0
Missouri	.18	.13	.16	.13	.06	.09	38	117	78
Montana	.10	.10	.10	.10	.10	.10	0	0	0
Nebraska	.09	.036	.06	.08	.05	.07	12	-28	-14
New Hampshire	.21	.21	.21	.05	.05	.05	320	320	320
New Mexico	.06	.06	.06	.06	.06	.06	0	0	0
North Carolina	.048	.048	.048	.04	.04	.04	2	2	2
North Dakota	.06	.06	.06	.03	.03	.03	100	100	100
Ohio	.18	.09	.14	.09	.04	.07	100	125	100
Oklahoma	.14	.08	.11	.10	.10	.10	40	-20	10
Pennsylvania	.14	.06	.11	.11	.05	.08	27	20	38
Rhode Island	.12	.10	.11	.05	.05	.05	140	100	120
South Carolina	.05	.05	.05	.03	.03	.03	67	67	67
South Dakota	.07	.07	.07	.03	.03	.03	133	133	133
Tennessee	.09	.09	.09	.04	.04	.04	125	125	125
Texas	.09	.05	.07	.05	.04	.045	80	25	56
Vermont	.14	.14	.14	.04	.04	.04	200	200	200
Virginia	.07	.06	.07	.03	.03	.03	130	100	130
West Virginia	.06	.06	.06	.05	.05	.05	20	20	20
Wyoming	.044	.044	.044	.06	.06	.06	-27	-27	-27
Average	.112	.090	.103	.07	.056	.061	63	60	70
Median	.10	.09	.09	.07	.05	.055	30	44	38

Four states were observed to have higher average per pupil insurance rates than Minnesota. They are California, Connecticut, Illinois, and New York. This is not surprising since all of these states have abrogated immunity to some degree (as discussed in Chapter II, Section VII, page 24).

What is surprising is the number of states that have abrogated immunity and have liability insurance rates lower than Minnesota's. These include Arizona, Hawaii, Iowa, Massachusetts, New Jersey, New Mexico, Oregon, Utah, Washington, and Wisconsin. One reason for their lower rates might be that, with the exception of New Jersey and Washington, all have abrogated immunity within the last six years. Since it takes almost two years before the experience of a "liability insurance year" can be appraised, it may be that more rate changes will be forthcoming in some of these states. For example, Iowa experienced a 25 per cent rate increase effective November 27, 1968, which is not reflected in the table. Also, according to Thomsen ([illegible]), the Minnesota rate is not yet regarded as "firm" because there is limited experience in both time and numbers. It must also be considered that although Minnesota was not regarded, until very recently as an "abrogated" state for school districts, those districts that carried liability insurance came under the abrogation law, and were fully liable up to the amount of their insurance. Therefore, any Minnesota school district that carried insurance had, in effect, abrogated its immunity, and could be compared to school districts in other states where abrogation was more complete.

II. CHARACTERISTICS OF MINNESOTA SCHOOL DISTRICTS THAT CARRY GENERAL LIABILITY INSURANCE

In his recent research project, the author studied Minnesota school districts that carried general liability insurance. He was intrigued by the fact that 108 (22.8 per cent) of the total Minnesota school districts that maintain elementary and secondary schools had rejected the available option of tort immunity. They had, instead elected to abrogate their immunity up to the amount of their insurance, and to be included under the provisions of the Minnesota abrogation law, Chapter 798, sections 1-5. Furthermore, 50 per cent of these districts covered, in their insurance programs, the maximum liability of $50,000 per person, and $300,000 per occurrence established in the state law. In so doing they are exceeding the waiver of immunity being required by the law of other Minnesota governmental subdivisions.

An investigation of the size, economic, and geographic characteristics of these districts was undertaken in an attempt to ascertain whether these forces were influencing the purchase of liability insurance. Answers were sought to these six basic questions:

1. Are school districts carrying liability insurance predominantly the larger districts of the state as identified by the number of resident units?
2. Do school districts carrying liability insurance tend to have comparatively high maintenance costs because of the added costs of insurance or, because they are "free-spending" districts?
3. Are school districts carrying liability insurance substantially above other school districts in the amount of adjusted assessed valuation per pupil and so able to "afford" the insurance premiums?
4. Do school districts carrying liability insurance have a relatively low percentage of state aid to maintenance costs?
5. Do schools carrying liability insurance tend to have low taxes, compared to others, because their wealth enables them to provide an educational program without sacrificial effort on the part of local taxpayers and still pay liability insurance premiums?
6. Are there disproportionately more schools carrying liability insurance located in areas with metropolitan population concentrations?

On the basis of the facts reported in Table V, p. 110, the following conclusions about questions (1) through (5) were reached.

The answer to Question (1) was - no. Although the percentage of schools above the median (58.4%) was slightly greater than the percentage below the median (41.6%), the 108 schools were distributed throughout all the decile ranges.

TABLE V

DISTRIBUTION IN DECILE RANGES OF 104 SCHOOL DISTRICTS CARRYING GENERAL LIABILITY INSURANCE AS COMPARED TO ALL DISTRICTS MAINTAINING GRADED ELEMENTARY AND SECONDARY SCHOOLS, JUNE 30, 1967

	Number of Pupil Units		Maintenance Costs, Local and Federal		Adjusted Assessed Valuation		Per Cent State Aid is of Adj. Maint. Costs	
	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.
P10	5.8	6	9.6	10	4.8	5	10.6	11
P20	10.6	11	9.6	10	10.6	11	4.8	5
P30	2.9	3	15.4	16	15.4	16	13.5	14
P40	9.6	10	5.8	6	7.7	8	8.7	9
P50	12.5	13	13.5	14	9.6	10	10.6	11
sub-total	(41.4	43	53.9	56	48.1	55	48.2	50)
P60	6.8	7	10.6	11	14.4	15	10.6	11
P70	10.6	11	13.5	14	14.4	15	12.5	13
P80	12.5	13	6.8	7	6.7	7	7.7	8
P90	18.3	19	6.8	7	10.6	11	14.4	15
P100	10.6	11	8.7	9	6.7	7	6.8	7
sub-total	(58.8	61	46.4	48	52.8	49	52.0	54)
total	(100.2	104	100.3	104	100.9	104	100.2	104)

It could not be said that school districts carrying liability insurance were predominantly larger districts.

The answer to Question (2) was - no. Fifty-three and nine-tenths per cent (53.9%) of the 104 schools were found below the median in maintenance costs per pupil unit, and 46.4% were above the median. The 104 schools were represented in all of the decile ranges of the distribution. It could not be said on the basis of this evidence that most schools carrying liability insurance have higher maintenance costs than those who do not.

The answer to Question (3) was - no. About half (48.1%) of the schools were below the median in the amount of assessed valuation behind each pupil unit, and 53% were above the median. The schools carrying liability insurance were represented in all the decile ranges of the distribution. It does not appear that the school districts that do purchase liability insurance are more apt to be wealthy in terms of assessed valuation behind each pupil unit than those who do not.

The answer to Question (4) was - no. Of the 104 districts, 48.2% rank below the median in the per cent state aid is of adjusted maintenance costs with 52% above the median. The schools are distributed throughout every decile range of the distribution. In this distribution, it was not demonstrated that the amount of state aid received relative to maintenance costs is a factor in the decision to purchase liability insurance.

To help answer Question (5), data on taxation provided by the Minnesota School Boards Association was used (262). This booklet provided data on school taxes paid in 1967 on a $16,000 market value residential home by school district residents in each of the twelve "director districts" of the Association. Tax figures were provided for 100 of the 104 school districts carrying general liability insurance. Taxes paid by the 100 districts and their distribution as compared to all districts is displayed in Table VI, p. 112. A "perfect" distribution would have been 20%--30%--30%--20%. The actual distribution was 17%--29%--32%--22%. Although there was a slight bias in favor of the higher taxed districts being more apt to carry general liability insurance, there were ample numbers in the lower taxed area to indicate the feasibility of their purchasing insurance. It does not seem, on the basis of this evidence, that school districts with lower taxes would be more apt to carry general liability insurance.

TABLE VI

DISTRIBUTION OF 104 SCHOOL DISTRICTS CARRYING GENERAL LIABILITY INSURANCE AS COMPARED TO ALL DISTRICTS MAINTAINING GRADED ELEMENTARY AND SECONDARY SCHOOLS: TAXES ON A $16,000 RESIDENCE

Percentiles	Dollar Range	Number of School Districts	Per Cent of School Dist.
Below 20th	$14-172	17	17%
20th-49th	$173-210	29	29%
50th-79th	$211-247	32	32%
80th-100th	$248-393	22	22%

The information in the Minnesota School Boards Association "Study on Salaries and Related Information," 1967-68, was tabulated on the basis of "director districts." These director districts essentially follow county lines, and were identified on page (i) of the booklet as follows:

Director District I	Fillmore,Houston, Winona, Goodhue, Olmsted, Wabasha, Dodge, Freeborn, Mower, Rice, and Steel counties
Director District II	Blue Earth, Faribault, Waseca, Cottonwood,Jackson,Martin,Watonwan LeSueur, Nicollet, Scott, Sibley,
Director District III	Murray, Nobles, Pipestone, Rock, Lincoln, Lyon, Yellow Medicine, Brown,Redwood,Renville, Big Stone, Chippewa,Kandiyohi, Lac Qui Parle, and Swift counties
Director District IV-VII	Hennepin,Dakota, Anoka, Washington and Ramsey counties
Director District VII	Benton,Sherburne,Stearns,Morrison, Todd, Chisago, Isanti, Kanabec, Mille Lac, Pine, Aitkin, Carlton and St.Louis County,south of Cotton

Director District IX-XI	City of Duluth,Lake, Cook, Itasca and St.Louis County,north of Cotton and International Falls
Director District X	Douglass, Grant, Pope, Stevens, Traverse, Becker, Clay, Ottertail, Wilkin, Cass, Crow Wing, Hubbard and Wadena counties
Director District XII	Beltrami, Clearwater, Lake of the Woods, Koochinching, Mahnomen, Norman,Pennington, Polk, Red Lake, Kittson,Marshall and Roseau cties.

If each director district shared "perfectly" in the per cent of their school districts carrying general liability insurance, they would each have 21.8% of their school districts carrying insurance. The actual experience was as follows:

Director District I	27.6%
Director District II	30.9%
Director District III	16.6%
Director District IV	23.0%
Director District IX-XI	25.0%
Director District X	20.2%
Director District XII	14.0%

Based on the above evidence,Question (6) was answered-no. Director Districts IV-VII, which contain the five-county area often referred to as "the metropolitan five-county area" in Minnesota, ranked third in the per cent of its total schools carrying general liability insurance. Director Districts IX and XI which contain Duluth, the third ranking city in Population, were fourth. Therefore, it could not be said on the basis of this evidence, that a metropolitan location is a leading factor in the decision to purchase or not purchase general liability insurance. It was noted, however, that District III (16.6%) and District XII (14.0%), which have the lowest percentage of participation in general liability insurance, represent the extreme northwest and west-southwest areas of the state. The factors that influence their lesser inclination to purchase general liability insurance are not available from this evidence.

In summary, the reasons why some school districts in Minnesota did and some did not carry general liability insurance was not available from the evidence presented in this section. Since most Minnesota school districts will now be compelled by law to purchase insurance, the motivational factors which influenced the original 104 districts in their purchase of insurance will probably never be known. Further inquiry into these factors in other states that retain immunity but permit insurance purchase could provide an interesting research study.

III. EXPERIENCE OF MINNESOTA SCHOOL DISTRICTS CARRYING GENERAL LIABILITY INSURANCE

The 104 school districts that carry general liability insurance, their enrollments, their three-year insurance premium experience and their insurance coverage are identified in Table VII, pp. 115-119.

Meaningful comparison of the 104 Minnesota schools was difficult in that, of the sixty-five reporting schools, only eleven had the most common coverage combination;$100,000 per individual, $300,000 per occurrence, and $25,000 property damage. These schools also had the following special coverages included in their average rates:

School	1966-67 Average Per Pupil Cost	Special Coverages
19	pkg.	520 outside bleacher seats,1 nurse on malpractice insurance
25	.227	2200 inside bleacher seats, 11 vocational courses
47	.241	2000 outside bleacher seats, 300 inside bleacher seats, vocational auto mechanics
55	.364	100 outside bleacher seats
70	pkg.	no special coverage
71	.334	350 outside bleacher seats, 450 inside bleacher seats
79	.378	1000 outside bleacher seats,licensed practical nurse vocational course

School	1966-67 Average Per Pupil Cost	Special Coverages
81	.322	2000 outside bleacher seats,3500 inside bleacher seats, 6 nurses on malpractice insurance
82	.405	no special coverage
86	.268	1060 outside bleacher seats,2200 inside bleacher seats
100	.229	600 outside bleacher seats, 800 inside bleacher seats

Eight schools carried the next most common coverage combination: $100,000 per individual, $300,000 per occurrence, $50,000 property damage. These schools had the following special coverage breakdown:

School	Average Per Pupil 1966-67 Cost	Special Coverages
16	.285	2300 inside bleacher seats and two automobiles
18	unk	800 inside bleacher seats
22	.523	200 outside bleacher seats, 1200 inside bleacher seats, 1 swimming pool
56	unk	no special coverages
72	.359	4000 outside bleacher seats,7000 inside bleacher seats
80	.287	2000 outside bleacher seats, "all" inside bleacher seats, and malpractice insurance for 1 nurse
99	.58	250 outside bleacher seats, 150 persons in school district's recreation program
104	.230	no special coverages

Even if all of the schools listed above were somewhat comparable in size (and they are not), meaningful per pupil cost comparisons are not feasible because of the wide differences in individually specified coverages. Further,

(to p. 120, please)

TABLE VII

SUMMARY: MINNESOTA SCHOOL DISTRICTS CARRYING GENERAL LIABILITY INSURANCE

	Enrollment 1966-67			Enroll. 1964-65	Ins. Costs 1966-67		Ins. Costs 1964-65			$/000 Extent of Coverage		
School	K-JH	HS	Total	Total	P. Pupil	Total	P. Pupil	Total	Incr. Decr.	P. Ind.	P. Occur.	P. Damage
1.	1186	402	1588	--	55.2¢	$ 871.00	--	--	Un	50	100	5
2.	205	54	259	--								
3.	822	293	1115	1055	71.6	798.00	--	--	Un	100	300	5
4.	2044	517	2561	--	40.6	1041.09	--		Un	50	300	25
5.	1245	234	1479	--	Package		--		Un	50	300	5
6.	307	119	426	--								
7.	337	---	337	--								
8.	488	158	646	538	43.6	282.00	46.0¢	$ 245.76	Dn	50	100	5
9.	2557	971	3528	3228	37.1	1308.00	45.2	1459.00	Dn	100	300	300
10.	451	173	624	--								
11.	17185	3785	20970	18052	33.3	6976.00	--					
12.	166	61	227	242	30.8	70.00	38.4	93.00	Dn	50	100	5
13.	183	57	240		Package				Un	25	--	--
14.	1872	552	2424	2417	15.6	380.00	15.7	380	Dn	100	300	10
15.	238	154	392	--								
16.	1223	456	1679	--	28.5	478.00			Un	100	300	50
17.	814	163	977	--								
18.	917	284	1201		Package				Un	100	300	50
19.	977	288	1265	--	Package				Un	100	300	25
20.	562	194	750	--								
21.	280	80	360	--	Package				Un	50	100	10
22.	521	165	686	617	52.3	359.00	--	--	Un	100	300	50
23.	330	90	420	--								
24.	932	270	1202		34.0	409.00			Un	100	300	5

TABLE VII (continued)

	Enrollment 1966-67			Enroll. 1964-65	Ins. Costs 1966-67		Ins. Costs 1964-65			$/000 Extent of Coverage		
School	K-JH	HS	Total	Total	P. Pupil	Total	P. Pupil	Total	Incr. Decr.	P. Ind.	P. Occur.	P. Damage
25.	2553	718	3348	3091	22.7¢	$ 789.00	--	--	Un	100	300	25
26.	18071	5131	23192	--								
27.	316	103	419		Package		--	--	Un	50	100	10
28.	240	68	308	--								
29.	337	96	433	470	31.8	158.00	--	--	Un	100	100	100
30.	2222	770	2992									
31.	1185	294	1479	1332	54.1	800.00	52.7¢	$ 700.00	Up	25	100	25
32.		220	860	--	27.7	239.00	--	--	Un	50	100	5
33.	550	350	900	900	64.5	581.22	58.7	529.03	Up	100	300	10
34.	4576	881	5457	--	Package				Un	500	500	500
35.	182	57	239	--								
36.	679	217	896	--	42.8	384.00	--	--	Un	100	300	10
37.	336	129	465	475	90.3	420.00	84.2	400.00	Up	100	500	50
38.	1189	409	1598	1485	27.5	440.00	28.4	410.09	Dn	100	100	0
39.	606	152	758	--	21.5	Package	--	--	Un	50	100	10
40.	424	177	601	--	21.6	130.00	--	--	Un	50	100	5
41.	445	134	579	--	26.7	155.00	--	--	Un	25	100	5
42.	338	111	449	--		562.00	--	--	Un	100	700	100
43.	629	193	822	--								
44.	225	58	283	288	35.3	100.00	34.7	100.00	Up	100	200	25
45.	1760	597	2357	--	38.5	743.00	--	--	Un	300	300	300
46.	2944	496	3440	--								
47.	1029	393	1422	--	24.1	352.00	--	--	Un	100	300	25
48.	627	238	865	622	20.9	181.00	31.6	197.00	Dn	50	100	5
49.	172	---	172	164	19.7	33.90	20.6	33.90	Dn	100	200	5
50.	1068	338	1406	--								
51.	1323	422	1745	1492	31.8	555.00	35.6	532.00	Dn	25	50	5
52.	455	154	609	--								

TABLE VII (continued)

	Enrollment 1966-67			Enroll. 1964-65	Ins. Costs 1966-67		Ins. Costs 1964-65			$/000 Extent of Coverage		
School	K-JH	HS	Total	Total	P. Pupil	Total	P. Pupil	Total	Incr. Decr.	P. Ind	P. Occur.	P. Damage
53.	343	92	432	390	47.3¢	$ 205.93	51.8¢	$ 202.12	Dn	50	300	50
54.	938	277	1215	--	22.8	278.00	--	--	Un	100	300	5
55.	683	213	896	893	36.4	349.67	28.8	246.64	Up	100	300	25
56.	2100	810	2910		Package		--	--	Un	100	300	50
57.	832	293	1125	--			--	--	Un	100	200	25
58.	1370	440	1811	--	50.8	923.00	--	--	Un	50	300	5
59.	772	268	1040	--								
60.	1755	438	2193									
61.	494	128	622	641	34.8	216.43	30.7	207.00	Up	100	300	10
62.	404	107	511	440	21.1	108.00	31.2	138.57	Dn	50	100	0
63.	1301	408	1709	--								
64.	297	119	416	--								
65.	423	---	423	--								
67.	8475	2061	10536	--								
68.	510	190	700	--	37.4	262.00	--	--	Un	100	500	25
69.	75	---	75	--	61.3	46.00	--	--	Un	100	300	75
70.	165	79	244	--	Package		--	--	Un	100	300	25
71.	864	258	1122	1082	33.4	375.00	32.6	353.00	Up	100	300	25
72.	8971	1418	10389	8501	35.9	3740.00	35.3	3000.00	Up	100	300	50
73.	1462	504	1966	--	27.7	546.00	--	--	Un	300	300	0
74.	839	231	1070	1030	05.6	60.00	05.8	60.00	Dn	25	50	25
75.	881	264	1145	--								
76.	199	52	251	--								
77.	285	80	365	--								
78.	472	109	581	--	38.2	222.30	--	--	Un	100	100	0
79.	5743	2451	8194	6476	37.8	3100.00	44.0	2850.00	Dn	100	300	25
80.	1380	460	1840	1747	28.7	528.05	27.5	480.53	Up	100	300	50

TABLE VII (continued)

	Enrollment 1966-67			Enroll. 1965-65	Ins. Costs 1966-67		Ins. Costs 1964-65			$/000 Extent of Coverage		
School	K-JH	HS	Total	Total	P. Pupil	Total	P. Pupil	Total	Incr. Decr.	P. Ind.	P. Occur.	P. Damage
81.	5565	1035	6600	5583	32.2¢	$2126.00	32.6¢	$1830.00	Dn	100	300	25
82.	1504	439	1943	--	40.5	788.00	--	--	Un	100	300	25
83.	346	--	346	--								
84.	961	377	1338	--								
85.	1015	381	1396	1168	63.3	884.94	86.4	1010.09	Dn	25	25	0
86.	1060	392	1452	913	26.8	390.00	50.2	459.00	Dn	100	300	25
87.	584	231	815	--	44.6	364.00	--	--	Un	100	300	10
88.	997	423	1720	1390	50.0	860.00	59.3	825.00	Dn	50	300	25
89.	486	168	654	--	54.3	145.00	--	--	Un	50	100	25
90.	4884	1386	6270	--								
91.	300	100	400	--	36.2	145.00	--	--	Un	50	100	25
92.	211	63	274	--								
93.	302	150	602	--								
94.	711	303	1014	--								
95.	440	140	580	580	37.2	216.00	37.4	216.00	Dn	25	25	25
96.	454	140	594	--								
97.	354	109	463	--								
98.	537	142	679	--			--	--				
99.	1644	426	2070	2055	58.0	394.00	--	--	Un	100	300	50
100.	4400	1041	5441	--	22.9	475.00	31.6	641.95	Dn	100	300	25
101.	176	71	247	--	63.1	156.00	--	--	Un	50	100	25
102.	2354	810	3164	--								
103.	281	999	380	--								
104.	598	216	814	--	23.0	187.60	--	--	Un	100	300	50
			106444	47,073		$37,687.13		$17,599.68				

TABLE VII (continued)

K-JH = Kindergarten through grade 9; HS = grades 10, 11 & 12; P. Pupil = per pupil; Incr. = increase; Decr. = decrease; Un = unknown; Dn = down; Up = up; P. Ind. = per individual; P. Occur. = per occurrence; P. Damage = property damage

1966-67 Average per pupil insurance cost:	$.354
1964 -65 Average per pupil insurance cost:	$.374

the schools are located in different areas of the state where the "manual" rates vary Different schools have also had different claim experience.

In seeking verification of the data received, the author became aware that some of the school administrators did not know what the basis for computing the premium for their school's policy had been. Specific data on the actual number of Minnesota school administrators and local insur-agents who did not know the basis of their premium computation is not available at this time. In such instances, the basis of the premium computation is known only to the underwriter in the regional or home office.For competitive reasons, some companies are reluctant to quote actual rates used in specific schools, even though authorized to do so by the school district.

Where it was possible to obtain the actual basic rates used, the following relationships were observed:

School	324s Manual Rate	324s Actual Rate	335s Manual Rate	335s Actual Rate
3	.20	.20	.32	.32
8	.20		.32	
11	.21		.33	
18	.20	.17	.32	.26
24	.20		.32	
29	.20	.199	.32	
44	.20		.32	
48	.20		.32	
62	.20		.32	
69	.20	.274	.32	
82	.20	.233	.32	.356
85	.20	.13	.32	.19
99	.20		.32	.32
100	.20	.17	.32	.26

The above data are not sufficiently comprehensive for extensive comment, but they do show that Minnesota school district general liability insurance is being written above and below the existing rate structure.

Purchasing policy of the school district may be one of the reasons for the differentials in insurance rates. There is no requirement for bidding insurance, and local board policy in accepting whatever rates are offered by a local agent could be a significant factor in comparative pupil costs. Smaller schools in small communities would tend to suffer from two disadvantages. First, if they wanted to bid their insurance, there would be fewer local agencies and thus fewer companies who might enter a bid. Secondly, the rates call for certain minimum premiums regardless of the base, particularly as the rates apply to stadium and bleacher insurance. This would tend to increase overall per pupil insurance costs substantially in small schools.

The questionnaire sent to Minnesota schools requested individualized reporting of claim data. Thirty-two of the sixty-eight reporting schools stated that there were no claims in the three-year period, 1964-65 through 1966-67. The reports of the remainder of the schools were inconclusive. The largest claim reported was $325 for a finger severed on a horizontal bar, but it cannot be said with certainty that larger claims have not been filed.

Remarks made on the questionnaires indicated to the author that in some schools no claim records are being kept in the schools. Persons who have claims were referred to the insurance agent, and, unless he or his company elect to report back to the school, there was no follow-up on the part of the administration or school board. It was not determined from this study just how prevalent this procedure is in Minnesota.

In 1966 Jacobs (202) made a study of school district administrative practices relating to school district liability in California. He found that 25 per cent of the responding California districts kept no records of claims filed against them. Twenty-one per cent of the responding schools not keeping records had pupil populations of more than 1,000, and three per cent had populations of more than 10,000.

One school (No. 48) did report the initiation of a $50,000 suit in 1968 relative to a wrestling accident. The $50,000 amount is the state individual maximum and is also the individual maximum of the insurance policy of that school.

If the school insurance policy limit had been $300,000, as is the case with School No. 45, the claim could as well have been $300,000, for the $50,000 limit does not apply to Governmental subdivisions that carry insurance in excess of the state law limitations.

The only supreme court cases on tort liability for school districts in the 1960's were discussed in Chapter III. The author was unable to find records of any substantial Minnesota claims paid from 1963 to 1967.

A majority of the sixty-five reporting school districts have not, as a group, experienced a per pupil premium cost increase during the three-year period from 1964-65 to 1966-67. In fact, eighteen schools (27.7 per cent) had experienced a per pupil decrease during that time. Seven schools (10.8 per cent) received a per pupil rate increase. Ten schools (15 per cent) remained unchanged. The others made coverage changes of sufficient magnitude to make comparison impossible. Of the thirty-five schools that had no coverage change, twenty-eight (80 per cent) either experienced a rate decline, or remained unchanged.

To summarize Section II; comparisons of liability insurance costs between Minnesota school districts are of questionable validity because of the wide variance in coverage, claim experience, rate areas, school purchasing policies, accuracy and extent of information about rates available to the local administrator and insurance agent and, the reluctance of some companies for competitive reasons to provide rate data.

Nevertheless, some useful information can be extracted from the display of insurance cost data of Minnesota schools. It: (1) illustrates the great variety of liability coverage being written in Minnesota; (2) points out that a majority of the reporting districts exceed the state tort liability act requirements; (3) provides the basis for a computation of an average rate, and, (4) shows no overall upward trend in per pupil rates during the past three years.

IV. EXPERIENCE OF SELECTED OUT-OF-STATE SCHOOLS CARRYING GENERAL LIABILITY INSURANCE

The "1963-64 Interim Commission Study on Tort Immunity" (337)collected some insurance data on a number of out-of-state school districts in states that had abrogated immunity. Names of the current superintendents of those districts were obtained from their respective state departments of education. Typewritten letters were sent to them,asking for the participation of their school districts in the completion of the questionnaire. The response, in general was poor; eleven of the thrity-three schools provided a useable reply; two districts had reorganized with other districts, thus negating any comparative value of their statistics. Further, the 1963 questionnaire did not seek as much detail as the current study, and the degree of understanding of the 1963 survey by its recipients is not clear. For example, the 1963 Interim Commission Report listed one Califronia district with an enrollment of 46,096 as spending $4,789.35, or, approximately ten cents per pupil for liability insurance limiting claims to $500,000 per individual, $1,500,000 per occurrence, and $100,000 property damage including automobile exposure per individual. In 1968 with an enrollment of 51,393, the report spending $52,058, or, $1.01 per pupil for insurance limiting claims to $2,000,000 each person, each occurrence and including coverage for property damage, with specified coverage for bleachers, eight swimming pools, malpractice insurance for twenty-five nurses, and a 10,000 participant recreation program. Basic state rates have remained relatively the same. The current $1.01 per pupil figure would not have been out of line with the other California schools reported in the 1963 survey at that time. This tends to suggest some interpretation error in the 1963 survey.

In the large metropolitan Los Angeles school district, the rates on comparable coverage increased from an average of thirty-one cents per pupil in 1963 to an average of thirty-five cents per pupil during the five-year period. This represents an average increase of 2.6 per cent per year. This increase seems to relate more closely to rate changes and general price increases during that time.

Both reporting New York schools increased per pupil insurance costs approximately 30 per cent during the five-year period. However, coverages now include pools, bleachers, and vehicles. It is not known if all of these were included in the 1963 figures.

A further comparison complication is that some of the schools have their insurance on a retrospective premium basis, as was described on page 99. They pay a relatively large premium, and, if they have a favorable loss experience, they get a substantial refund. However, the refund comes back to the district the following insurance year. If the premium cost has been reported without subtracting the refund, the per pupil cost could be grossly overstated.

Another difficulty is that there is ordinarily a marked difference between the per pupil rates for elementary-junior high school pupils and for senior high pupils. Even without any change in the basic rate, a maturing school district that formerly had a substantial majority of elementary pupils can experience a substantial average per pupil increase in insurance cost as a result of having a larger number of its pupils enrolled in the senior high school.

In summary of Section IV: all of the validity questions raised on page 123 about comparing insurance costs of Minnesota schools, i.e., variance in coverage, claim experience, rate zone, accuracy and extent of information available, and school purchasing policies also apply to out-of-state schools. In addition, there are differences in state laws, in their judiciary, and in local customs. In the opinion of the author, the evidence from individual out-of-state school districts explored in this book and in the others reviewed is not sufficiently stable to be relevant to the basic question of school district liability costs.

V. SUMMARY OF CHAPTER V

Most liability insurance rates are developed by rating organizations who retain professional staffs for that purpose.

They "keep score"on insurance costs by perpetually collecting data on claim frequency, claim costs, pure premium, and loss ratios. They also analyze court decisions and new state statutes for implications for insurance rates. Other alternatives, such as experience rating, schedule rating, and retrospective rating are available in lieu of "manual" rates. Despite attempts at scientific approaches to rate-making, which have been assisted by the advent of the computer, rate-making may still be "more an art than a science." The rates developed are, Nevertheless, the most objective, systematically collected, comprehensive and accurate data available on the subject.

Some states have more and larger claims, and correspondingly higher rates, with no readily explainable reason, other than they seem to be "socially-minded"states.

Minnesota seems to have that reputation among its upper midwest neighbors. Only four states have higher average rates than Minnesota.Nine of the states that have essentially abrogated immunity have lower liability rates than Minnesota did, before Minnesota immunity was abrogated.Several of these have fewer restrictions in their abrogation law than Minnesota.

Median and average general liability rates in states that have abrogated immunity are approximately double the average and median rates in non-abrogated states. Rate increases in abrogated states since 1960 have averaged about 22 per cent as compared to 70 per cent for non-abrogated states.

On the basis of evidence presented, the decision of school districts to purahase or not purchase general liability insurance does not appear to be related to (1) size of school district; (2) maintenance costs; (3) amount of adjusted assessed valuation per pupil unit; (4) ratio of the percentage of state aid to maintenance costs; (5)amount of local taxes being paid for school purposes; or, (6)metropolitan population concentration.

Comparisons of insurance costs of individual Minnesota and out-of-state schools are of doubtful validity because of wide variance in coverage, claim experience,school purchasing policies, and reluctance of some insurance companies for competitive reasons, to provide rate data.

What then, can be gleaned from the data and narrative presented in this chapter which will be of value in ascertaining costs to the State of Minnesota now that immunity has been abrogated by legislative action in the 1969 settion? How much should individual school districts who are not presently carrying liability insurance be adding to their 1969 levy for the purchase of general liability insurance? These questions constitute the major topics of Chapter VI.

CHAPTER VI

COST IMPLICATIONS OF TORT LIABILITY TO SCHOOL DISTRICTS IN 1970

I. GENERAL CONSIDERATIONS

If liability insurance-rate-making is "more an art than a science" (378), then attempting to predice insurance costs must also involve some non-scientific considerations. A number of potentially influential factors can still affect trends after this book is published.

For example, press overage of the immunity change could make a difference. If a large metropolitan daily with state-wide coverage runs a bold front-page headline, "School Districts Open For Suit," and the news is picked up and featured by radio and television, there is little doubt that more lawsuits will be started the following year than if abrogation quietly becomes a fact. To date, press coverage of immunity abrogation has been modest.

Another unknown factor is what, if anything, individual school districts will do about teacher liability. School districts are now compelled under M.S. 466.06 to "procure insurance against liability of the municipality and its officers employees, and agents for damages resulting from its torts and those of its officers, employees, and agents, . . ." In M.S. 466.07, school districts "may defend, save harmless, and indemnify any of its officers and employees, whether elective or appointive, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty.

Section 466.07, which considerably broadens the scope of abrogation of Section 466.06, appears to remain permissive. The total cost of tort liability to all state schools will be influenced considerably by local decisions as to whether to include, or not include "save harmless" insurance under Section 466.07.

The constitutionality of maximun limitations for damages in state laws remains under some question because of the Illinois cases cited in Chapter II, page 32. The Minnesota law which permits school districts to "choose" the amount of their liability according to the amount of insurance they purchase may be particularly vulnerable under the "equal rights under the law" provisions of the constitution. If an additional case were to hold that the limitation laws were unconstitutional per se, this could affect the insurance rates.

In order to bring the conclusions and evidence of the preceding chapters to bear on the problem of insurance cost, certain assumptions about these events yet to come must be made. The assumptions made are as follows:

1. Publicing and media coverage of the legislature's modest revisions in the act will not receive the attention it might have, if a new act had passed.
2. The statutory claim limitation of \$50,000/\$300,000 will not be declared unconstitutional in Minnesota.
3. Inflation will continue for the next three years at a rate of about 2-4 per cent per year.
4. Despite the possible implications to the constitutionality of the law, and recommendations of their State School Board Association, school districts that have not previously purchased liability insurance will exceed the statutory limitations when forced to purchase insurance. Districts purchasing insurance for the first time will acquire an average \$100,000/\$300,000/\$50,000 P.D. policy.

The data collected and the conclusions reached in the research that relate to insurance costs also had to be analyzed and summarized in order to focus on the overall cost question. The following conclusions were extracted:

1. The national trend toward tort immunity abrogation for governmental subdivisions, including school districts, is irreversible. This means a continued broadening of the base for school district liabil-

ity insurance and possible more national attention to school safety programs.

2. Minnesota school districts may become more safety conscious, and improved safety procedures and practices will be forthcoming. Abrogation in most states has been followed by an increase in the studies relating to safety and liability, especially as it related to physical education and industrial arts.

3. Average insurance rate increases in states where tort immunity has been abrogated have not been alarmingly greater than rate increases in non-abrogated states. In none of the abrogated states were there any current reports of school districts experiencing difficulty in purchasing insurance. Average per pupil rates in California, for example, are similar to average rates in Minnesota. Average per pupil insurance costs in California are higher than in Minnesota, however, due in part to there being no maximum limitation in California's law. It appears that most California districts purchase insurance with maximums in excess of one million dollars.

   According to Themmes (409), school liability insurance in Minnesota is regarded as "good business," and there is no indication that additional Minnesota school districts will have difficulty obtaining insurance. The only reason for refusal to issue an insurance policy might be that a school district refuses to correct unsafe conditions that have resulted in repeated accidents.

4. Minnesota liability insurance rates for school districts are already high, as compared with other states. The premium experience of school districts that carry general liability experience over the last three years has been stable, indicating that the premiums are, in general, considered adequate.

Pure logic would argue that no rate increase should be necessary, because placing more districts under the law will broaden the experience base and should tend to lower rates. As a practical matter, the rating bureaus may contend that their experience indicates that any liberalization of immunity results in more claims. On that basis they will probably request an immediate rate increase. The Minnesota Insurance Commission will have to evaluate the justification for the request.

5. Insurance rates, as established by expert staffs of rating organizations and modified by state regulatory agencies are the most reliable indicators of overall insurance costs. Insurance costs of local and out-of-state individual schools were rejected as predictors because of wide variances in coverage, claim experience, accuracy and extent of information, school purchasing policies and availability of critical information.

II. COSTS TO LOCAL SCHOOL DISTRICTS

Based on the previously stated assmuptions of events yet to come and on the above conclusions, it is suggested that a local school district might compute its liability insurance costs for the fiscal years 1969-60 and 1970-71 as illustrated in Table VIII, page 132. Readers other states may substitute their own rates, found in Appendix H. This computation can serve only as a rule-of-thumb guide for budgeting purposes. There are many ways in which these insurance costs can be decreased, such as:

1. Careful attention to safety practices will provide good claim experience and increase the probability of rate decrease.

2. Responsible planning of the entire insurance program with expert counseling, to arrive at the most feasible and economical plan for the district will lower costs. Institutional multi-risk policies may be subject to credits of 15 per cent or more (249). This could effectively mitigate the potential rate increases previously described.

TABLE VIII

LOCAL SCHOOL LIABILITY INSURANCE PREMIUM CALCULATION

	Kindergarten-Junior High (0324s)		Sr. High School (0335s)		Stadium (0308s)	
	B.I.	P.D.	B.I.	P.D.	B.I.	P.D.
Present Rates (Area 1 & 3)	.21	.006	.33	.006	.26	.02
10% upward adjustment	.021	--	.033	--	.026	--
New Rates	.231	.006	.363	.006	.286	.02
Factor Adj. $100/300,000 & $50,000 P.D.	x1.71	x1.26	x1.71	x1.26	x1.71	x1.26
New Factor Adj. Rate	.395	.008	.621	.008	.489	.025
Pupils	822	822	293	293	--	--
Admissions (per 100)					4,000	4,000
Costs	$424.69	$6.58	$181.95	$2.34	$14.96	.100

Summary:

Kindergarten-Jr. High	(0324s) = $431.27	
Sr. High	(0335s) = 184.29	
Stadium	(0308s) = 50.00	(minimum)
	Total $665.57	

Per pupil average $= \frac{665.57}{1115} = \$.60$

Note: If the above school started the insurance as of January 1, 1970, they would have to budget approximately half of the $665.57, or $332.79, for 1969-70, and the full amount, plus enrollment changes, for 1970-71.

3. Where practicable considering the size of the community and the availability of qualified companies, placing the insurance "package" on bids will help assure the lowest possible rates. Specifications for this type of policy should be available at least four weeks prior to the bid opening so that the companies may have an opportunity to file deviations from the established rates at the insurance commissioner's office. A sample specification "Specifications For Bidding Combined Comprehensive Bodily Injury and Property Damage Liability Insurance Including Automobile Liability and Property Damage" is included as Appendix I. These specifications were prepared by the California Association of Public School Business Officials and were adapted by Professor Terrance E. Hatch of Utah State University for the State of Utah (333).

   Other insurance "packages" which are even more inclusive are available and should be considered by prospective school district liability insurance purchasers.

Cost estimating procedures suggested for local schools on page 132, and for the state on page 134 do not include any amount for the purchase of "save-harmless" insurance for teachers or other school employees. Local school districts who wish to place this in their cost estimate could use an average of $2.50 per employee insured. The range in costs to districts for this type of insurance could easily be from $1.75 to $4.00 per employee insured.

III. COSTS TO THE STATE OF MINNESOTA

The legislatures in all states should also be concerned with costs to the state as a whole. They set the amounts for state aids to education and need to know how new spending proposals for the school districts will affect the total cost outlay for the entire state.

Based on the assumptions and conclusions of the first

TABLE X

COMPUTATION OF STATE LIABILITY INSURANCE COSTS, 1969-70

Grades	Enrollment	Area 1 Rate	Costs
1 - 9	294,780	.36 (B.I.)	$106,120.80
1 - 9	294,780	.008(P.D.)	2,358,24
10 - 12	88,799	.56 (B.I.)	49,727.44
10 - 12	88,799	.008(P.D.)	710.39
	1,500 admissions @ per 100.38 + .025		6,075.00
	50 school stadium rentals at min.$50		2,500.00
	Total, Area 1		$167,491.87
		Area 2	
1 - 9	297,257	.34	$101,067.38
1 - 9	297,257	.008	2,378.06
10 - 12	101,803	.55	55,991.65
10 - 12	101,883	.008	814.42
	429 districts admissions @ min. $50		21,450.00
	150 school stadium rentals @ min.$50		7,500.00
	Total, Area 2		$189,201.51
		Area 3	
1 - 9	16,682	.36	$ 6,005.52
1 - 9	16,682	.008	113.46
10 - 12	4,435	.56	2,493.60
10 - 12	4,435	.008	35.48
	45,000 admissions	.26 + .025	128.25
	$15,000 rental income	.44 + .025	69.75
	Total, Area 3		$ 8,866.06

TOTALS

Area 1	$167,491.87
Area 2	$189,201.51
Area 3	8,866.06
Total	$365,559.44
Plus kindergarten:	
67,087 x $.35	23,480.45
Subtotal	$389,039.89
Less est. prem. in force	- 61,780.00
Est. total additional cost	$327,259.89

two sections of this chapter, an estimate was compiled of the total estimated new costs to Minnesota school districts. This could, however, be used as a model for cost estimation in any state, given availability of cost data on existing insurance in force.

In Table IX, factored rates were compiled for each of the four basic insurance rating categories for each of the three Minnesota rate areas. The 1.71 factor used was derived from Table III, page 104. It serves to the adjust the basic code rate which is standardized on $5,000/$10,000 limits to a $100,000/$300,000 limits policy which was previously estimated as the average type of policy that would be purchased.

TABLE IX

BASIC FACTORED RATES FOR MINNESOTA RATE AREAS

Basic Coverages	Area 1	Area 2	Area 3
0324s	$.21 x 1.71 = $.36	$.20 x 1.71 - $.34	$21 x 1.71 = $.36
0335s	.33 x 1.71 = .56	.32 x 1.71 = .55	.33 x 1.71 = .56
0308s	.22 x 1.71 = .38	.15 x 1.71 = .26	.15 x 1.71 = .26
0395s	.26 x 1.71 = .44	.19 x 1.71 = .32	.26 x 1.71 = .44

Education 1967 (p.180-181) was used to obtain 1969-70 estimated enrollment figures for the seven-county metropolitan area which corresponds very closely with Insurance Rate Area #1. Enrollment figures for the City of Duluth (Rate Area #3) were taken from the Minnesota Educational Directory (1967-68) (263). Since this area as not identified by Education 1967 as a "growth" area, no upward projections were made for 1969-70. The enrollment figures from Area #1 and Area #3 were then subtracted from the total enrollment figures for 1969-70 given in Education 1967, to obtain the enrollment figure for"the rest of the state" (Rate Area #2).

Kindergarten figures, not included in the Education 1967 prediction were then taken from the Minnesota Education Directory, 1967-68, and assumed to be constant. Since Area #1 plus Area #3 and Area #2, grades 1 to 9, enrollments were relatively well balanced, the two factored rates of $.34 per pupil and $.36 per pupil were averaged to $.35 and applied to all kindergarten pupils. The kindergarten insurance costs of $23,480.45 were then added to the total in Table X.

The total premium now in force was calculated by taking the total premiums of the sixty-five reporting schools and dividing it by 62.5% on the assumption that the non-reporting schools had the same average coverage. It had been previously established that the non-reporting schools were distributed in each centile range according to the valuation distribution. The total estimated average premium cost for the insured schools, $61,780, was then subtracted from the total state premium estimate to obtain the estimated additional cost of insurance, $327,259.89.

From the total enrollment used in the calculation, 870,843, the enrollment of the insured schools, 106,444 may then be subtracted to leave 764,399, the number of additional pupils to be insured.

The total additional cost of $327,259.89, divided by the total additional 764,399 pupils resulted in an average cost of 42.8 cents per pupil. This is an increase of 6.5 cents per pupil, or 17.9 per cent more than the 1966-67 average cost of 36.3 cents per pupil for the reporting schools. However, more than eight per cent of the total cost of $327,259 is contained in the overages being assessed to classifications 0308 and 0395 in stadium and bleacher insurance because of the minimum $50 premiums. If these are condensed into "package" policies, considerable savings could result. At any rate, the $327,259 figure, subject to 10 per cent change for the many possible variables, appears to be as good an estimate of the total costs as can reasonably be ascertained from the data available.Approximately half, or $163,630 would be required for the 1969-70 school year when the law takes effect January 1, 1970. The full cost would be required for the 1970-71 school year. Total school enrollment is expected to drop slightly in 1970-71,but not enough to significantly vary the total cost of liability insurance.

In Conclusion:

Most school administrators and school board members would probably prefer to spend school funds on staff salaries, instructional equipment and supplies rather than on insurance premiums. The author of this book was an educator who had worked actively against abrogation in Minnesota in prior legislative sessions based on the "preserve the dollar for education" theory. However, after many months of data collection, intensive research, dialogue with many knowledgeable individuals, analysis and reflection, it is now his conclusion that school districts should learn to live with controlled liability.

This position is taken for two general reasons. The first is pragmatic. A strong trend toward abrogation has been demonstrated, and it is much less disruptive to the educational process to lose liability through a well-planned legislative action than through abrupt judicial abrogation. Judicial abrogation may come between legislative sessions when no immediate controls can be enacted.

The second general reason for abrogation is theoretical. Immunity should be abrogated because it seems to be the right thing to do. The strong national trend by both legislative and judicial bodies indicates that it is becoming representative of the general sentiment in the country. All leading legal scholars support governmental tort responsibility. Most appellate court judges who speak on the subject oppose immunity although some believe that the legislatures, not the courts should take action. In recent years, most courts that refuse to abrogate immunity concede injustice, but defer to the legislatures for changes in the laws.

As governments, including quasi-governments such as school districts have grown larger and more influential, there seems to be a growing realization that individuals need protection from erring governments as well as from erring private citizens.

GLOSSARY OF COMMON LEGAL TERMS

abrogate -	**to annul, repeal, or destroy an order or rule issued by a subordinate authority; to repeal a former law by legislative act, or by usage.**
accident -	**an unforeseen event, occurring without the will or design of the person whose act causes it; an unexpected, unusual, or undesigned occurrence.**
action -	**a legal proceeding by one party against another for the protection of a right or the redress of a wrong.**
ad litem -	**for the suit; a guardian ad litem is a guardian appointed to prosecute or defend a suit on behalf of an infant, or otherwise incapacitated party.**
agent -	**one who represents and acts for another under the contract or relation of agency.**
allegation -	**a statement by a party of what he undertakes to prove.**
allege -	**to state positively but without proof; to make an allegation.**
appellant -	**the party who takes an appeal from one court to another.**
appellee -	**the party against whom an appeal is taken.**
assumption of risk -	**a term or condition by which there is an express or implied agreement that the dangers of injury ordinarily or obviously incident to the situation will be at the risk of the participant individual.**
attractive nuisance -	**a property owner is liable when all the following circumstances obtain:** **1. a child is injured by an instrumentality the child did not recognize as dangerous** **2. the owner of the instrumentality knew that it was dangerous and that it was attractive to children** **3. the owner of the instrumentality knowingly left it exposed in a place liable to be frequented by children**

case law - the aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law.

citation - any legal reference; includes the law book in which the reference is found, the volume number and the section or page number. Judicial citations refer to court decisions, statutory citations to statutes.

common law - that body of unwritten law, founded upon general customs, usage or common consent, and in natural justice, or reason; it is custom long acquiesced in or sanctified by moral usage and judicial decision.

contributory negligence - negligence, when set up as a defense, shows that the plaintiff was guilty of negligence contributing to his injury.

damages - the financial or monetary compensation awarded in court to the person who has suffered injury through the unlawful act, omission or negligence of another.

defendant - the party against whom relief or recovery is sought in a court action.

discretionary powers - powers or rights to act according to the dictates or conscience of judgment.

factual cause - the obvious, evident or plainly understood cause of an accident.

foreseeability - the ability to anticipate hazardous situations or potential accident causes; the first test in determining whether or not there was negligence.

governmental immunity - immunity from tort actions enjoyed by governmental subdivisions in common-law states.

indemnify - to reimburse, to secure against loss or damage; to protect or insure against financial loss.

injury - any wrong or damage done to another, either in his person, rights, reputation or property.

in loco parentis - in the place of the parent and being charged with some of the parents' rights and responsibilities.

intervening cause - the negligent acts of a third party which serve to break the chain of causation between the accident and the alleged negligence of the defendant.

invitee - one who is at a place upon the invitation of another.

judgment - decision of the court, usually involving the payment of damages.

jurisprudence - a system of laws of a country.

liable - bound or obliged in law or equity; responsible; chargeable; answerable, compelled to make satisfaction, compensation, or restitution.

liability - legal responsibility; the state of one who is bound in law and justice to do something which may be enforced by action.

licensee - a person who is neither a passenger, servant, or trespasser, and who does not stand in any contractual relation with the owner of the premises and who is permitted to go thereon for his own interest, convenience, or gratification.

litigant - one engaged in a law suit.

litigation - the act or process of carrying on a law suit.

ministerial - a definite duty arising under circumstances admitted, required or imposed by law.

negligence - the omission of doing something which a reasonable man, guided by those normal considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable or prudent man would not do.

nonfeasance - the neglect or failure of a person to do dome act he ought to do. The term is usually used in reference to a failure to perform a duty towards the public whereby some individual sustains a special damage.

nuisance - that class of wrongs that arise from:

1. the unreasonable, unwarranted or unlawful use by a person of his own property, either real or personal, or
2. his own improper, indecent, or unlawful personal conduct which causes
   a. an obstruction or an injury to the right of another or the public
   b. the production of material annoyance, inconvenience, discomfort or hurt to another or to the public.

opinion - the statement of reasons delivered by a judge or court giving the judgment which is pronounced upon a case.

plaintiff - the person who brings an action; one who sues by filing a complaint.

precedent - a judicial decision, a form of proceeding, or a course of action that serves as a rule for future determinations in similar or analogous cases; an authority to be followed in courts of justice.

proximate cause - that which, in the natural and continual sequence unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.

quasi-municipal corporations - bodies politic and corporate, created for the sole purpose of performing one or more municipal functions. Public corporations organized for governmental purposes and having for most purposes the status and powers of municipal corporations, but not municipal corporations proper, such as cities and incorporated towns.

redress - to make amends as for a loss; to relieve of anything unjust, to make reparation of a wrong.

res ipsa loquitor - the act or thing speaks for itself.

respondeat superior - let the master answer. This means that a master is liable in certain cases and in certain places for the wrongful acts of his servant or employee.

save-harmless - requiring that a body exempts or reserves from harm; specifically, it may require that a school district defend and pay judgments against employees who had been held personally liable for torts committed in connection with their employment.

safe-place - legislative enactments requiring owners to build and maintain buildings, grounds and equipment safely, and holding them responsible if they do not.

stare decisis - to stand by decided cases; to uphold precedents; to maintain former adjudications. Doctrine of stare decisis rests upon the principle that the law by which men are governed should by fixed, definite, and known; that when the law is declared by a court of competent jurisdiction authorized to construe it, such declaration, in the absence of palpable mistake or error, is itself evidence of the law until changed by competent authority.

statute of limitation - restriction on the amount of time that may lapse between an accidental injury and the filing of a notice of claim or damage suit.

statutory law - those statutes enacted by the legislature of any sovereign state.

subrogation - the substitution of another person in the place of one to whose rights he succeeds.

tort - legal wrong committed on the person or property of another, independent of contract.

tort-feasor - a wrong-doer; one who commits or is guilty of a tort.

ultra vires - acts beyond the scope of authority.

BIBLIOGRAPHY

1. Abruzzo v. Board of Education of City of New York, 210 N.Y.S. (2d) 21, 12 App. Div. (2d) 797 (1961).

2. Abruzzo v. City of New York, 196 N.Y.S. (2d) 907 (1960).

3. Ackert v. City of Minneapolis, 219 Minn. 190, 151 N.W. 976 (1915).

4. Alabama: Code of Alabama, Recompiled (1958), Tit. 52, sec. 61 (12), Tit. 55, sec. 334.

5. Alabama Constitution. Art. 1, sec. 14.

6. Allen v. Independent School District No. 17, 173 Minn. 5, 216 N.W. 533 (1928).

7. Allen v. Los Angeles City Board of Education, 126 P. (2d) 170 (1959).

8. Altnow v. Town of Sibley, 30 Minn. 186, 14 N.W. 877 (1883).

9. Alystyne, Arno Van. "Claims Against Public Entities: Chaos in California Law," VI Los Angeles Law Review 205-268, University of California, 1959.

10. American Law Reports 68 (2d) 1437.

11. Appenzeller, Herbert T. "An Analysis of Court Cases Pertaining to Tort Liability for Injuries Sustained in a Public School Program of Physical Education," unpublished Ed. D. thesis, Drake University, 1966.

12. Arizona Revised Statutes, Annotated (1956), Tit. 15, C. 4, secs. 15-441, 15-453, and, 12-821 through 12-826.

13. Arkansas Statutes Annotated (1960), Tit. 80, sec. 80-1812.

14. Arthur v. Board of Education of Ticonderoga, 187 N.Y.S. (2d) 181 (1959).

15. Baer Paper Corp. v. York City School District, 75 York 85 (1961).

16. Bailey v. New York, 3 Hill 1531 (1842).

17. Bailey v. School Dist. No. 49, King County, 185 P. 810 (1919).

18. Ball, Steadman. "King or People?," XXX Kansas Bar Journal 187, (1961).

19. Bank v. Brainerd School District, 49 Minn. 106, 51 N.W. 814 (1892).

20. Barbato v. Board of Education of City of New York, 182 N.Y.S. 875 (1959).

21. Bard v. Board of Education, 140 N.Y.S. (2d) 850 (1955).

22. Barjas v. San Diequito High School District, 312 P. (2d) 282 (1957).

23. Barnecut v. Seattle School Dist. No. 1, 387 P. (2d) 904 (1964).

24. Beers v. Arkansas, 61 U.S. 527 (1837).

25. Bell *et al* v. Presbytery of Boise *et al*, 421 P. (2d) 745 (1966).

26. Bennett v. Bd. of Ed. of City of New York, 226 N.Y.S. (2d) 593 (1962).

27. Benson v. South Kitsap School District No. 402, 386 P. (2d) 137 (1963).

28. Benton v. Trustees of Boston City Hospital, 140 Mass. 13, 1 N.E. 836 (1885).

29. Berman v. Minn. State Agricultural Society, 93 Minn. 125, 100 N.W. 732 (1904).

30. Bergman v. Board of Education of City of Chicago, 30 Ill. App. (2d) 65, 173 N.E. 565 (1961).

31. Bernadine v. City of New York, 62 N.E. (2d) 604 (1945).

32. Bernstein, Joseph M. "Governmental Tort Liability and Immunity in Wisconsin," 1961 Wisconsin Law Review 486,497 (1961).

33. Bertola v. Board of Education of the City of New York, 1 A.D. (2d) 973, 150 N.Y.S. (2d) 831 (1956).

34. Black's Law Dictionary, 4th ed., St. Paul, Minnesota, West Publishing Company, 1951.

35. Blackstone Commentaries (10th ed. 1887).

36. Board of Education of City of New York, 227 N.Y.S. (2d) 791 (1962).

37. Boise Development Co. v. Boise City, 30 Idaho 675, 167 P. 1032 (1917).

38. Bojko v. City of Minneapolis, 154 Minn. 167, 191 N.W. 399 (1923).

39. Bolmeier, Edward C. "Tort Liability of School Personnel," The American School Board Journal, 136:30.32, March, 1958.

40. Bolmeier, E. C. "The School Principal's Proper Concept of School Law," Bulletin of the National Secondary School Principals, 42 No. 236:1-8, 1958

41. Bolmeier, E. C. "Tort Liability of School Personnel," American School Board Journal, 136:30-32, March, 1958.

42. Bolmeier, E. C. "Trends in Pupil Transportation Litigation," The American School Board Journal, 140:38-40, February, 1960.

43. Bonvento v. Bd. of Public Instruction, 194 So. (2d) 605 (1967).

44. Borchard, Edwin. "Governmental Liability in Tort," 34 Yale Law Journal 1, 6, 129, 229 (1924-25).

45. Borchard, Edwin. "Governmental Liability in Tort," 36 Yale Law Journal 757, 1039 (1926-27).

46. Borchard, Edwin. 28 Colorado Law Review 577,734.

47. Borchard, Edwin M. "Municipal Liability in Tort--Proposed Statutory Reform," 20 A.B.A.J. 747-748 (1934).

48. Boxberger v. State Highway Dept., 250 P. (2d) 1007, 1008 (1952).

49. Bowman v. Union High School District No. 1, Kitsap County, 22 P. (2d) 991 (1933).

50. Boy, Edwin W. "Recent Trends in Tort Liability of Public Schools and Implications for the Public Schools of Pennsylvania," Ed.D. Penn. State University, 1966.

51. Boyer v. Iowa High School Athletic Association, 127 N.W. (2d) 606 (1964).

52. Brantman v. City of Canby, 119 Minn. 396, 138 N.W. 671 (1912)

53. Brenton v. Shenango, 81 Pa. Sup. Co. 450 (1923).

54. Briegal v. City of Philadelphia, 135 Pa. 451 (1890).

55. Briscoe v. School District No. 123 of Grays Harbor County, 201 P. (2d) 697 (1949).

56. Brooks v. Board of Education of City of New York, 189 N.E. (2d) 497 (1963).

57. Brown v. Board of Trustees of Hamptonburg School District No. 4, 303 N.Y. 484, 104 N.E. (2d) 866 (1952).

58. Bryant v. City of St. Paul, 33 Minn. 289, 23 N.W. 220 (1885).

59. Bucholtz v. City of Sioux Falls, 91 N.W. (2d) 606 (1958).

60. Buck v. McLean, 115 So. (2d) 764 (1960).

61. Bush v. Quinalt School District No. 97 of Grays Harbor County, 201 P. (2d) 697 (1949).

62. Byrnes v. City of Jackson, 105 So. 861 (1925).

63. California Law Revision Commission. "A Study Relating to Sovereign Immunity," Stanford University, Stanford, California, 1963.

64. California: West's Annotated California Education Code, secs. 903, 904, 906.5, 1041-1045, and 13557.

65. California: West's Annotated California Government Code, secs. 711, 715, 716, and 53050-53055.

66. Campbell v. Pack, 389 P. (2d) 464 (1964).

67. Carabba v. Anacortes Sch. Dist. No. 103, 435 P. (2d) 936 (1967).

68. Carr v. Wright, 423 S.W. (2d) 521 (1968).

69. Carroll v. Fitzsimmons, 383 P. (2d) 81 (1963).

70. Casper v. Longview School District, 105 P. (2d) 503 (1940).

71. Chackness v. Board of Education of Hartford County, 120 A. (2d) 774 (1960).

72. Chmela v. Board of Education of the City of New York, 207 N.Y.S. (2d) (1962).

73. Charonnat v. San Francisco Unified School Dist. 113 P. (2d) 643 (1943).

74. Chikara v. City of New York, 190 N.Y.S. (2d) 576 (1959).

75. Chisholm v. Georgia, 2 Dall. U.S. 419 (1793).

76. Christofides v. Hellenic Eastern Orthodox Christian Church of New York, 227 N.Y.S. (2d) 946 (1962).

77. Cianci v. Board of Education of the City School of the District of Rye, 238 N.Y.S. (2d) 547 (1963).

78. Cioffi v. Board of Education of City of New York, 278 N.Y.S. (2d) 249 (1967).

79. Clark v. City of Buffalo, 41 N.E. 459 (1942).

80. Claussen v. City of Luverne, 103 Minn. 491, 115 N.W. 643 (1908).

81. Coates v. Tacoma School District, 347 P. (2d) 1093 (1960).

82. Cobra v. Ray City, 366 P. (2d) 986 (1961).

83. Colorado Racing Assn., 316 P. (2d) 582, 585 (1957).

84. Colorado Revised Statutes of 1963 Annotated, C. 123, Art. 10, sec. 42.

85. Connecticut: General Statutes of Connecticut, Revision of 1958 (1964), Tit. 10, C. 170, sec. 10-235,236; Tit. 52, C. 925, sec. 52-556.

86. Conway v. Humbert, 145 N.W. (2d) 524 (1966).

87. Cooley, Thomas M. A Treatise on the Law of Torts, Chicago, Illinois, Calaghan and Company, 1930.

88. Corbean v. Xenia City Board of Education, 366 F. (2d) 480 (1966).

89. Cordaro v. Union Free School District No. 22, Farmingdale, 220 N.Y.S. (2d) 656 (1961).

90. Cordaro v. Union Free School District No. 22, Farmingdale, 220 N.Y.S. (2d) 656 (1961).

91. Corl v. L-O Bldg. Co., 55 Mun. 176 (1962).

92. County School Board of Orange County v. Thomas, 112 S.E. (2d) 877 (1960).

93. Coughlin, George C. "The King Can Do Wrong," *National Civic Revue*, September, 1965, Published by the National Municipal League, New York, New York.

94. Cullinan v. Jefferson County, 418 S.W. (2d) 407 (1967).

95. Dahl v. Hughes *et al*, 347 P. (2d) (1959).

96. Davis, Kenneth Culp. "Tort Liability of Governmental Units," 40 Minnesota Law Review 751, June, 1956.

97. Davis, Tyree Ratchiffe. *General Liability Insurance Handbook*, Jenkintown, Pennsylvania, 1959.

98. Decatur v. Parham, 268 Ala. 585, 109 So. (2d) 692 (1959).

99. Decker v. Dundee Central School District, 176 N.Y.S. (2d) 307 (1958).

100. Delaware Code Annotated (1953), Tit. 14, C. 29 sec. 2904.

101. DeMoully, John H. "Fact Finding for Legislation: A Case Study," *American Bar Association Journal*, Vol. 50:285, March, 1964.

102. Diamond v. Board of Education of the City of New York, 171 N.Y.S. (2d) 703 (1958).

103. Diele v. Board of Education of the City of New York, 146 N.Y.S. (2d) 511 (1955).

104. Dillon v. York City School District, 220 A. (2d) 535 (1965).

105. Domino v. Mercurio, 234 N.Y.S. (2d) 1011 (1962).

106. Dosdall v. Olmsted County, 30 Minn. 96, 14 N.W. 458 (1882).

107. *Education, 1967*: A Statewide Study of Elementary, Secondary and Area Vocational-Technical Education in Minnesota, Bureau of Field Studies and Surveys, Otto Domian, Director College of Education University of Minnesota, Minneapolis, Minnesota, 1967.

108. Edwards, Newton. *The Courts and the Public Schools*, 2d. ed. Chicago, Illinois, University of Chicago, 1955.

109. Edwards, Newton. *School Law II*, *Court Decisions*, *Encyclopedia of Educational Research*, revised ed., New York, New York, The Macmillan Company, 1950.

110. Edwards, Walter L. "The Teacher and School Law," *Nations Schools*, No. 52:12, 39-41, 1953.

111. Emmons v. City of Virginia, 152 Minn. 295, 188 N.W. 561 (1922).

112. "Exonerating God," *Time Magazine*, LXXXIX:78, March 23, 1962.

113. Farmer's Mutual Automobile Insurance Company v. Gast, 117 N.W. (2d) 347 (1962).

114. Favale v. Roosevelt Public School District No. 8, and United Cerebral Palsy Association, 193 N.Y.S. (2d) 202 (1959).

115. Fein v. Bd. of Ed. of City of New York, 111 N.E. (2d) 732 (1953).

116. Ferguson v. Payne, 111 N.Y.S. (2d) 531 (1952).

117. Fernandez v. Flint Board of Education, 283 F. (2d) 906 (1960).

118. Ferrill v. Board of Education, Central School District No. 1, 174 N.Y.S. (2d) 91, motion denied 177 N.Y.S. (2d) 1014, 6 A.D. (2d) 880 (1958).

119. Fetzer v. Minot Park District, 138 N.W. (2d) 601 (1965).

120. Feurstein v. Board of Education of City of New York, 202 N.Y.S. (2d) 524 (1960).

121. Fields v. Durnham City Board of Education, 111 S.E. (2d) 910 (1960).

122. Finch v. Board of Education, 30 Ohio State 37 (1876).

123. Fisher, Leslie Robert. "An Analysis of Patterns of Liability Decisions in the Public Schools of Selected States of the United States," unpublished Ed.D. thesis, Norman, Oklahoma, The University of Oklahoma, 1963.

124. Flagullo. V. Pennsylvania Hospital, 208 A. (2d) 193 (1965).

125. Florida Statutes Annotated (1960), Tit. 15, C. 234, sec. 234.03.

126. Flowers v. Board of Commissioners of County of Vanderburgh County, 168 N.E. (2d) 224 (1960).

127. Foley v. Pierce County School District No. 10, 172 P. 819 (1918).

128. Ford v. Kendall School District, 121 Pa. 543, 15 A. 812 (1888).

129. Forgnone v. Salvador Unified Elementary School District 106 P. (2d) 932 (1940).

130. Frank v. Orleans Parrish School Board, 195 So. (2d) 451 (1967).

131. Franklin, Simon L. "Tort Liability of the School District," *Illinois Law Forum*, p. 429-438, Fall, 1958.

132. Freel v. School City of Crawfordsville, 41 N.E. 312 (1895).

133. Friedman, Simon L. "Tort Liability of School Districts and Teachers," *Illinois Journal of Education*, LIII:15-20, October, 1962.

134. Fuller, Edgar, and Casner, A. James. "Municipal Tort Liability in Operation," 54 Harvard Law Review 437, 1941.

135. Galfo, Armand J. "Buses and the Law," *Overview*, p. 40-41, August, 1960.

136. Garber, Lee O. The Bi-Weekly School Law Letter, Laramie, Wyoming, Published by R.R. Hamilton.

137. Garber, Lee O. (ed.) *Current Legal Concepts In Education*, Philadelphia, Pa., University of Pennsylvania Press, 1966.

138. Garber, Lee O. "Liability of Districts That Carry Insurance," *The Nations Schools*, 60:89-90, October, 1957.

139. Garber, Lee O. "Illinois Court Overthrows Immunity Doctrine," The Nations Schools, 60:70-72, 1959.

140. Garber, Lee O., and others. Law and the School Business Manager, Danville, Illinois, The Interstate Printers and Publishers, Inc., 1957.

141. Garber, Lee O. "District Liability for Injuries," The Nations Schools, 58:44-46, July, 1956.

142. Garber, Lee O. "Legal Problems Ride the School Bus," The Nations Schools, p. 85-89, April, 1957.

143. Garber, Lee O. "Save Harmless Statutes," The Nations Schools, 59:63-64, June, 1957.

144. Garber, Lee O. "How Liable Are School Board Members?" The Nations Schools, 62:64, December, 1958.

145. Garber, Lee O. "Abate That Fire Hazard," The Nations Schools, p. 57-58, February, 1959.

146. Garber, Lee O. "State Courts Define School Liability," The Nations Schools, p. 104-110, March, 1959.

147. Garber, Lee O. "Schools That Earn Money May Lose Their Immunity," The Nations Schools, p. 24, September, 1963.

148. Garber, Lee O., and Edwards, Newton. Tort and Contractual Liability of School Districts and School Boards, Danville, Illinois, The Interstate Printers and Publishers, 1963.

149. Garber, Lee O., and Reutter, Edmund Jr. The Yearbook of School Law, Danville, Illinois, The Interstate Printers and Publishers Inc., 1968.

150. Garber v. Central School District No. 1 of Town of Sharon, 295 N.Y.S. 850 (1937).

151. Garrison v. Community Consolidated School District No. 65, 181 N.E. (2d) 361 (1961).

152. Gauerke, Warren E. Legal and Ethical Responsibilities of School Personnel, Englewood Cliffs, New Jersey, Prentice-Hall Inc., 1959.

153. Gay v. Wake County Bd. of Ed., 119 S.E. (2d) 460 (1961).

154. Gress, David G. "Comparative Negligence: Let Us Hearken to the Call of Progress," 43 *American Bar Association Journal* 127-130, February, 1957.

155. Geiger v. Calument County, 118 N.W. (2d) 197 (1972).

156. General Ins. Co. v. Gilliam County High School Dist., 234 F. Supp. 109 (1964).

157. Georgia Code Annotated (1952) with 1967 Pocket Supplement, Tit. 32, C. 32, sec. 429, and, sec. 32-431.

158. Germond v. Board of Education of Central School District No. 1, 197 N.Y.S. (2d) 548 (1960).

159. Gilbert v. Sacramento Unified School District, 65 Cal. Rptr. 913 (1968).

160. Gisondi v. Town of Harrison and Board of Education, Union Free School No. 6, 220 N.Y.S. (2d) 105 (1961).

161. Goldstein v. Bd. of Ed. of Union Free School No. 23, Town of Hempsted, 266 N.Y.S. (2d) 1 (1965).

162. Goncalves v. San Francisco Unified Sch. Dist. 332 P. (2d) 713 (1959).

163. Gonzalez v. Mackler, 241 N.Y.S. (2d) 254 (1963).

164. "Governmental Immunity in Illinois: The Molitor Decision and Legislative Reaction," LIV Northwestern Law Review 588-605, 1959-1960.

165. Governmental Immunity Interim Commission Report; A Report Prepared By the Governmental Immunity Interim Commission, 1963-64 Minnesota State Legislature.

166. Graff v. Bd. of Education of the City of New York, 15 N.Y.S. (2d) 941 (1939).

167. Graham v. Worthington, 146 N.W. (2d) 626 (1966).

168. Green, Leon. "Freedom of Litigation," 38 Ill. Law Review 335, 382, 1944.

169. Grover v. San Mateo Junior College District of San Mateo County 303 P. (2d) 602 (1956).

170. Grube v. City of St. Paul, 34 Minn. 402, 26 N.W. 228 (1886).

171. Gullickson v. McDonald, 62 Minn. 278, 64 N.W. 812 (1895).

172. Hahn v. City of Ortonville, 238 Minn. 428, 57 N.W. (2d) 254 (1953).

173. Hamilton, Alexander as quoted in The Federalist No. LXXXI at 125-26, Bourne ed., 1947.

174. Hamilton, Robert R. Legal Rights and Liabilities of Teachers, Laramie, Wyoming, Laramie Printers, 1956.

175. Hamilton, Robert R. "The National School Law Reporter," New London, Connecticut, Arthur C. Croft Publications Vol. XIII, No. 22, January 15, 1964.

176. Hamilton, Robert R. and Mort, Paul B. The Law and Public Education, Chicago, Illinois, The Foundation Press, 1959.

177. Hamilton, Robert R. and Mort, Paul B. The Law and Public Education, Chicago, Illinois, The Foundation Press, 1941.

178. Hammond, W. Rogers. Insurance Accounting, Fire and Casualty, 2nd edition, Philadelphia, A Chilton Publication, 1965.

179. Hans v. Louisiana 134 U.S. 1 (1890).

180. Harff v. City of Cincinnati, 11 Ohio N.P. 41 (1911).

181. Hargrove v. Town of Cocoa Beach, 96 So. (2d) 130 (1957).

182. Harno, Albert James. "Tort Immunity of Municipal Corporations," 4 Illinois Law Quarterly 28,42, 1921.

183. Hartman, Robert D. "The Non-Immunity of School Districts to Tort Liability, unpublished Ed.D. thesis, Urbana, Illinois, The University of Illinois, 1964.

184. Harvey v. Clyde Park Dist. 32, 203 N.E. (2d) 573 (1965).

185. Hawaii: Revised Laws of Hawaii (1955), sec. 245 A-2, and, sec. 134-6.

186. Hess v. School District of City of Harrisburg, 69 Dauph. 77 (1956).

187. Holt v. School District No. 71 of King County, 173 P. 335 (1918).

188. Holytz v. Milwauke, 17 Wis. (2d) 26 (1962).

189. Hoose v. Drumm, 22 N.E. (2d) 233 (1939).

190. Horowitz v. Board of Education, Town of Hempstead, Union Free School District, 210 N.Y.S. (2d) 600 (1960).

191. Howard v. City of Stillwater, 171 Minn. 391, 214 N.W. 656 (1927).

192. Howell v. Haney, 330 S.W. (2d) 941 (1960).

193. Huff, Harold. "Tom Moliter and the Divine Right of Kings," Chicago, Kent Law Review, p. 44, April, 1960.

194. Huff v. Northampton Board of Education, 130 S.E. (2d) 26 (1963).

195. Husser v. School District of Pittsburgh, 228 A. (2d) 910 (1967).

196. Idaho Code (1949) with 1967 Pocket Supplement, Tit. 33, C. 15, sec. 33-1507, and, sec. 33-801.

197. Illinois (post-Molitor statutes according to 61 Northwestern University Law Review 265):

Full immunity granted. Ill. Rev. Stat. Ch. 122, § 10-22.28 (1965), schools of less than 500,000 inhabitants, injury arising out of operation of school safety patrol. Ill. Rev. Stat. Ch. 42, 4-40 (1965) district drainage commissioners.

Required to indemnify employees. Ill. Rev. Stat. Ch. 24, § 1-4-5 (1965) Chicago policemen; except, complete immunity for non-willful torts. Ill. Rev. Stat. Ch. 24, § 1-4-6 (1965) other policemen up to $50,000. Ill. Rev. Stat. Ch. 34 § 301.1 (1965) sheriffs and deputies up to $50,000 for non-willful torts.

Required to insure their employees. Ill Rev. Stat. Ch. 122, § 10-21.6 (1965) boards of education in districts of over 1,000 population, but less than 500,000. Ill. Rev. Stat. Ch. 122, § 34-18.1 (1965) Chicago Board of Education.

Authorized to purchase liability insurance. Ill. Rev. Stat. Ch. 34 § 429.7 (1965) counties. Ill. Rev. Stat. Ch. 121, § 6-412.1 (1965) townships, and district highway commissioners. Ill. Rev. Stat. Ch. 122 §§ 10-22.3 and 29-9 (1965) school districts of less than 500,000 population. Ill. Rev. Stat. Ch. 139, § 39.24 (1965) townships.

Subjected to limited liability. Ill. Rev. Stat. Ch. 121, §§ 381-87 (1965) county superintendent of highways--$10,000. Ill. Rev. Stat. Ch. 122 §§ 821-31 (1965) public and private schools and school districts--$10,000.

Made fully liable in tort. Ill. Rev. Stat. Ch. 24, § 1-4-4 (1965) negligence of municipal firemen in the operation of fire vehicles. Ill. Rev. Stat. Ch. 24, § 1-4-7 (1965) municipalities for property damage caused by removal or destruction of condemned buildings. Ill. Rev. Stat. Ch. 24, § 1-4-8 (1965) municipalities of over 5,000 for mob violence. Ill. Rev. Stat. Ch. 42 § 4-40 (1965) drainage districts. Ill. Rev. Stat. Ch. 121 § 6-402 (1965) townships and district highway commissioners. Ill. Rev. Stat. Ch. 127½, § 46 (1965) negligence of fire protection firemen in the operation of fire vehicles.

198. Indian Towing Co. v. United States, 350 U.S. 65, (1955).

199. Indiana: Burns' Indiana Statutes Annotated (1965 Replacement) Tit. 39, sec. 39 1819.

200. Iowa: Senate File 710, Sixty-Second General Assembly, Laws of 1967.

201. Jackson v. Hankinson, 229 A. (2d) 267 (1967).

202. Jacobs, Allen W. "The Administration of California Laws Holding School Districts Liable for Negligence," unpublished Ed.D. dissertation, University of California, 1964.

203. Jacobs, Milton C. *The Law of Accidents*, New York, New York, Prentice-Hall Inc., 1937.

204. Johns, Roe L., and Morphet, Edgar L. Financing the Public Schools, Englewood Cliffs, New Jersey, Prentice-Hall Inc., 1960.

205. Johnston v. Girvin, 208 N.E. (2d) 894 (1965).

206. Joint Legislative Committee on Municipal Tort Liability. "Municipal Tort Liability," State of New York, 1964.

207. Juntila v. Everett School District, 35 P. (2d) 78 (1934).

208. Kansas: Session Laws of Kansas (1963), C. 411, sec. 2, and, Gen. Stat. Annotated, sec. 72-615.

209. Kass v. Board of Education of the City of New York, 225 N.Y.S. (2d) (1962).

210. Kawananakoa v. Ploybank, 205 U.S. 349,353 (1907).

211. Keesee v. Board of Education of the City of New York, 235 N.Y.S. (2d) 300 (1962).

212. Kellam v. School Board of the City of Norfolk, 117 S.E. (2d) 96 (1960).

213. Kelly v. School District No. 71 of King County, 173 P. 333 (1918).

214. Kelso v. City of Tacoma, 390 P. (2d) 2 (1964).

215. Kennedy v. Gamble & Gamble Const. Co. 26 D. & C. (2d) 530 (1961).

216. Kentucky Revised Statutes (1960), C. 160, sec. 160.310.

217. Kerwin v. San Mateo County, 1 Cal Rptr. 437, (1959).

218. Kidwell v. School District No. 300, Whitman County, 335 P. (2d) (1959).

219. Kigin, Dennis J. Teacher Liability in School Shop Accidents, Ann Arbor, Michigan, Prakken Publications, Inc., 1963.

220. Kigin, Dennis J. "Tort Liability Affecting Shop Teachers With Provision for Avoiding Accidents and Litigation," University of Missouri Bulletin, Vol. LXI, No. 1, Education Series No. 74, Columbus, Missouri, University of Missouri, 1964.

221. Kinnare v. City of Chicago, 49 N.E. 536 (1898).

222. Koehler, Robert W. "A Study of Legal Liability in Education With Emphasis on Physical Education in Selected States from 1955 to 1965," unpublished Ed.D. thesis, University of Utah, 1967.

223. Koehn v. Board of Education of City of Newton, 392 P. (2d) 949 (1964).

224. Krueger v. Bd. of Education, 310 Mo. 239, 274 S.W. 811 (1925).

225. Lambo v. Board of Education of City School District of Rochester, 193 N.Y.S. (2d) 585 (1959).

226. LaMont v. Stavanough, 129 Minn. 321, 152 N.W. 720 (1915).

227. Landale Court Apartments v. Landale Borough School District, 34 D & C (2d) 302 (1964).

228. Landry v. Travelers Indemnity Co., 155 So. (2d) 102 (1963).

229. Langford v. United States, 101 U.S. 341 (1879).

230. Lawes v. Bd. of Ed. of City of New York, 266 N.Y.S. (2d) 364 (1965).

231. Lehmuth v. Long Beach Unified School District, 348 P. (2d) 887 (1960).

232. Leflar, Robert A. and Dantrowitz, Benjamin E. "Tort Liability of the States," 29 N.Y.U.L. Review 1363 (1954).

233. Lemley, Charles R. "Tort Liability of Public Schools," unpublished Ph.D. thesis, East Texas State College, 1964.

234. Liber v. Flor, 353 P. (2d) 590 (1960).

235. Lieber, Leslie. "When in Doubt, Sue," This Week, p. 6, January 17, 1965.

236. Lilienthal v. San Learndro Unified School District of Alameda County, 293 P. (2d) 889 (1956).

237. Lipman v. Brisbane, 359 P. (2d) 465 (1961).

238. List v. O'Connor, 167 N.E. (2d) 188 (1960).

239. Lopez v. City of New York, 163 N.Y.S. (2d) 562 (1957).

240. Lorton v. Brown County Community School Dist. No. 1, 220 N.E. 161 (2d) (1966).

241. Louisiana Statutes Annotated (1950), with 1967 Cumulative Supplement, Tit. 17, C. 1, sec. 110, 159, 159.1, 169.

242. Luce v. Board of Education of Village of Johnson City, 157 N.Y.S. (2d) 123 (1956); affirmed, 164 N.Y.S. (2d) 43 (1957).

243. Ludwig v. Board of Education of City of Chicago, 183 N.E. (2d) 401 (1962); appeal denied Ill. Supreme Court, Case No. 37387 (1962).

244. Luna v. Needles School District, 316 P. (2d) 773 (1957).

245. MacDonald, Austin. American State Government and Administration, 6th ed., New York, New York, Crowell Pub. Co. 1961.

246. MacDowell v. State Highway Commissioner, 112 N.W. (2d) 491 (1961).

247. Massachusetts General Laws, C. 41, sec. 100A, 100C.

248. McClanahan, Winfred L. "Trends Reflected in the Investigation of Bodily Injury Liability of Public School Districts in Selected State School Systems." unpublished Ed.D. thesis, Okoahoma State University, 1966.

249. McCormick, Roy C. Coverages Applicable, Indianapolis, Indiana, The Rough Notes Company, 1966.

250. McDonnell v. Brozo, 280 N.W. 100 (1938).

251. McGee v. Board of Education of the City of New York, 226 N.Y.S., (2d) 329 (1962).

252. Mahoney v. City of Boston, 50 N.E. 939 (1898).

253. Martin, David V. "Trends in Tort Liability of School Districts as Revealed By Court Decisions." unpublished Ed.D. thesis, Durham, North Carolina, Duke University, 1962.

254. Meyer v. Bd. of Education 86 A. (2d) 761 (1952).

255. Meyerhoffer v. East Hanover Twp. School District, 280 F. Supp. 81 (1968).

256. Michael v. School District, 391 P. 209, 137 A. (2d) 456 (1958).

257. Michigan Statutes Annotated (1959), with 1967 Cumulative Supplement, Tit. 15, sec. 15.3579, and, sec. 9.1708.

258. Millard v. Lewis, 185 N.Y.S. (2d) 708 (1959).

259. Miller v. City of Minneapolis 75 Minn. 131, 77 N.W. 788 (1898).

260. Miller v. Bd. of Ed. of City of New York, 50 N.E. (2d) 529.

261. Millinger v. Warwick Union Sch. Dist., 55 Lan. Rev. 279 (1957).

262. Minnesota School Boards Association, "Study on Salaries and Related Information, 1967-68."

263. Minnesota State Department of Education, "Selected Data for Districts Maintaining Graded Elementary and Secondary Schools, Year Ending June 30, 1967," (December, 1967).

264. Minnesota Statutes Annotated, sec. 466.02-466.09; 466.12.
Minnesota Laws, Chapter 79, secs. 12-16 (1851).
Minnesota Statutes Annotated, sec. 127.03

265. Minnesota:
Opinion, Attorney General, 159-B-3 (1951).
Opinion, Attorney General, 844-F-6 (1952).
Opinion, Attorney General, No. 50, p. 105 (1952).

266. Mississippi Code of 1942 Annotated with 1962 Cumulative Supplement, Tit. 24, C. 5, sec. 6328-26, and, sec. 6336-19.

267. Mokovich v. Independent School District No. 22, 177 Minn. 446, 225 N.W. 292 (1929).

268. Molitor v. Kaneland Community Unit School District No. 302, 163 N.E. (2d) 89 (1959); certiroari denied 80 S.C.R. 955, 362 U.S. 968.

269. Molitor v. Kaneland Community Unit School District No. 302, 24 Ill. (2d) 467, 173 N.E. (2d) 471 (1961).

270. Montana: Revised Codes of Montana, with 1967 Cumulative Supplement, Tit. 75, C. 34, sec. 75-3406.

271. Moore v. Board of Education of City of New York, 255 N.Y.S. (2d 540 (1964).

272. Morris v. Ortis, 437 P. (2d) 652 (1968).

273. Morris v. School District of Mount Lebanon, 144 A. (2d) 737 (1958).

274. Morris v. Union High School District A, King County, 294 P. 998 (1931).

275. Moulton v. City of Fargo, 39 N.D. 502, 167 N.W. 717 (1917).

276. Mouly, George J. *The Science of Educational Research*, New York, New York, American Book Company, 1963.

277. Mower v. The Inhabitants of Leicester, 9 Mass. Rep. 247 (1812).

278. Muffer v. Incor. Town of Kemmerer, 338 P. (2d) 808 (1959).

279. Muskopf v. Corning Hospital District, 359 P. (2d) 457 (1961).

280. Nabel v. City of Atlanta, 126 S.E. 905 (1925).

281. Nash v. Rapides Parish School Board, 188 So. (2d) 508 (1966).

282. National Education Association, Research Division. "The Legal Status of the Public School Pupil," National Education Association Research Bulletin 26, No. 1:1-38, (1948).

283. National Education Association, Research Division. "Plaintiffs and Defendants," National Education School Law Series 36 No. 2:58-60, (1958).

284. National Education Association, Research Division. "The Pupil's Day in Court: Review of 1961," National Education Association School Law Series, Research Report 1962-R5:36-45, (1962).

285. National Education Association, Research Division. "Teacher's Day in Court," National Education Association School Law Series (1939).

286. Nebraska: Revised Statutes of Nebraska (1958), C. 79, art. 4, sec. 79-489.

287. Nestor v. City of New York, 211 N.Y.S. (2d) 975 (1961).

288. Nevada Revised Statutes (1965), Tit. 3, C. 41, sec. 41.031.

289. New Hampshire Revised Statutes Annotated (1955), Tit. 37, C. 412, sec. 412.3.

290. New Jersey Collopy v. Newark Eye and Ear Infirmary, 141 A. (2d) 276 (1958).

291. New Jersey Statutes Annotated with 1967 Pocket Supplement, Tit. 18, C. 14, art. 1, sec. 18:12-14, and C. 5, sec. 18:5-30, C. 5, art. 12, sec. 18:5-50.2, C. 5, art. 12, sec. 18:5-50.4.

292. New Mexico Statutes (1953), 1967 Pocket Supplement, C. 5, art. 6, secs. 5-6-19, and 6-6-20, and 5-6-21.

293. New York: McKinney Consolidated Laws of New York Annotated, Education Law, secs. 2560-2562, 3023, and 3813.

294. New York: McKinney Consolidated Laws of New York Annotated, General Municipal Law, sec. 50-e.

295. New York State School Board Association, Inc. "An Insurance Program for the Guidance of School Boards," Albany, New York, New York State School Board Association Inc., 1951.

296. Nichols, Clark A., and others. _McQuillen_, _The_ _Law_ _of_ _Municipal_ _Corporations_, Chicago, Illinois, Callaghan and Company, 1949.

297. Nissen v. Redelack, 246 Minn. 83, 74 N.W. (2d) 300 (1955).

298. Nolte, Chester. "What is Legally Adequate Playground Supervision?", _American_ _School_ _Board_ _Journal_ 150 No. 2:42-43, 1965.

299. Nolte, Chester, and Linn, John. _School_ _Law_ _for_ _Teachers_, Danville, Illinois, The Interstate Printers and Publishers, Inc., 1963.

300. North Carolina: General Statutes of North Carolina (1959) with Cumulative Supplement to 1967, C. 115, art. 23, sec. 115-193, and, art. 5, sec. 115-53.

301. North Carolina State Claims Act (1951), C. 1059, sec. 1.

302. Nutting, Charles B. "Legislative Practice Regarding Tort Claims Against the State," 4 Missouri Law Review 9-11, (1939).

303. O'Byrne v. Upland Borough School District, 46 Del. Co. 293 (1959).

304. O'Dom v. Willms, 131 N.W. (2d) 140 (1964).

305. Ohio: Page's Ohio Revised Code, Annotated, with 1967 Pocket Supplement, Tit. 33, sec. 3327.09.

306. Ohman v. Bd. of Ed. of City of New York, 90 N.E. (2d) 474 (1949).

307. Oklahoma Statutes Annotated (1949) with 1967 Cumulative Supplement, Tit. 70, art. 9, sec. 9-7.

308. Oregon Revised Statutes, sec. 30.310, 30.320, and 332.180.

309. Osborne v. The City of Pittsburgh, 161 A. (2d) 636 (1960).

310. Parker v. Board of Education of City of New York, 213 N.Y.S. (2d) 482 (1961).

311. Parrish v. Pitts, 429 S.W. (2d) 45 (1968).

312. Pastor v. City of Bridgport, 238 A. (2d) 43 (1967).

313. Patterman v. Whitewater, 32 Wisconsin 250 (1966).

314. Peck, Cornelius J. "Role of Courts and the Legislatures in the Reform of Tort Law," 48 Minn. Law Review 265, December, 1963.

315. Pennsylvania: Purdon's Pennsylvania Statutes Annotated (1949), with 1967 Cumulative Supplement, Tit. 24, C. 1, art. 7, sec. 7.7774, and, art. 13, sec. 13-1362.

316. Pennsylvania: Public School Code (1949) sec. 1801 (3) and 1806.

317. Perotta, Joseph E. "An Examination of School Tort Law in Selected Atlantic and Northeastern States and the Implications for Education Therein," unpublished Ed.D. thesis, Rutgers, the State University, 1965.

318. Peters v. Bellinger, 166 N.E. (2d) 581 (1960).

319. Petras v. Kellor, 122 S.E. (2d) 177 (1961).

320. Picard v. Greisinger, 138 N.W. (2d) 508 (1965).

321. Pierce v. Yakima Valley Memorial Hospital, 260 P. (2d) 765 (1953).

322. Pintek v. Allegheny County, 142 A. (2d) 296 (1958).

323. Pollock and Maitland, History of English Law 516, 2nd ed. (1923).

324. Pound v. School District of Garden City, 127 N.W. (2d) 390 (1964).

325. Powers Farms v. Consolidated Irr. Dist., 119 P. (2d) 717 (1942).

326. Price, Miles O., and Bitner, Harry. Effective Legal Research, Boston Massachusetts, Little, Brown and Company, 1956.

327. Price v. Mount Diable Unified School District, 327 P. (2d) 203 (1960).

328. Price v. York, 164 N.E. (2d) 617 (1960).

329. Procopio v. Wampum-Big Beaver School District, 21 Law. L.J. 160 (1962).

330. Prosser, William L. Handbook of the Law of Torts, St. Paul, Minnesota, West Publishing Company, 1964.

331. Rabon v. Rowan Memorial Hospital, 152 S.E. (2d) 485 (1967).

332. Rayonese v. Hilferty, 191 A. (2d) 422 (1963).

333. "Recommendations for School District Administration of the Utah 'Governmental Immunity Act' Imposing Liability on Governmental Entities," Utah State Board of Education, compiled by Terrance M. Hatch.

334. Redfield v. School District No. 3 in Kittitas County, 92 P. 770 (1907).

335. Reiss, Albert J. Schools in a Changing Society, New York, The Free Press, 1965.

336. Remmelein, Madeline O. *School Law*, Danville, Illinois, The Interstate Printers and Publishers, Inc., 1962.

337. "Report of the Governmental Immunity Interim Commission," submitted to: The Legislature of the State of Minnesota, April, 1965.

338. "Report of the Subcommittee on Immunity of the State from Suit; Claims Against the State of Minnesota,: 32 Minn. Law Review 539, p. 545-556 (1948).

339. Reutter, E. Edmund Jr., and Bolmeier, Edward C. "Tort Liability and the Schools," *American School Board Journal*, 136:28-32, March, 1958.

340. Revised Code of Montana Annotated (1961), Tit. 75, C. 34, sec. 75-3406.

341. Rezny, Arthur A. and Remmelein, Madeline O. *A Schoolman in the Law Library*, Danville, Illinois, The Interstate Printers and Publishers Inc., 1962.

342. Richards v. School District of City of Birmingham, 83 N.W. (2d) 643 (1957).

343. Richter v. Board of Public Instruction of Dade County, 91 So. (2d) 794 (1957).

344. Rittmiller v. School District No. 84, 104 F. Supp. 187 (1952).

345. Roach, Stephen F. "Abuse of School Board's Discretionary Authority, *The American School Board Journal*, 138:67-71, August, 1959.

346. Roach, Stephen F. "School Law," *School Management*, 9:63, 1964.

347. Roalfe, William R. (ed.) *How to Find the Law*, 6th ed., St. Paul, Minn., West Publishing Co., 1965.

348. Rodriques v. San Jose Unified School District, 322, P. (2d) 70 (1958).

349. Rodriguez v. Seattle School Dist. No. 1, 401 P. (2d) 326 (1961).

350. Rogers v. Bd. of Ed. of City of Los Angeles, 67 Cal. Rptr. 905 (1968).

351. Rohde, Fred. "Tort Immunity and Iowa School Districts," unpublished Ph.D. thesis, Ames, Iowa, Iowa State University, 1965.

352. Rose v. Board of Abilene, 337 P. (2d) 652 (1959).

353. Rosenfield, Harry N. "Tort Liability of School Districts," paper presented at a conference on school law, held at the University of Pennsylvania, September 28-29, 1964, as reported by Garber in (137).

354. Rosenfield, Harry N. *Liability for School Accidents*, New York, New York, Harper and Brothers, 1940.

355. Rosenfield, Harry N. *Procedure on Appeals to State School Authorities*, New York, New York, University School of Law, 1942.

356. Rupe v. State Public School Building Authority, 245 F. Supp. 726 (1965).

357. Russell v. Edgewood Ind. Sch. Dist., 406 S.W. (2d) 249 (1966).

358. Russell v. Men of Devon, 100 English Reports 359 2 T.R. 667 (1738). Original not available for examination; cited in Spanel v. Mounds View School District No. 621, 118 N.W. (2d) 795 (1962).

359. Salner v. City of New York, 209 N.Y.S. (2d) 447 (1961).

360. Sanchick v. Board of Education of City of New York, 172 N.Y.S. (2d) 748 (1958).

361. Sawga v. Tucson High School District, 281 P. (2d) 105 (1955).

362. Sayers v. School District No. 1, 114 N.W. (2d) 191 (1962).

363. Schaerer, Robert W. "Liability, Liability Insurance, and the School Business Manager," *American School Board Journal*, 119 No. 7:5-7, 1964.

364. Schaerer, Robert W. and McGhehey, Marion A. *Tort Liability of School Districts*, Bloomington, Indiana, Beanblossom Publishers, 1960.

365. Schaerer, Robert W. "The Tort Liability of Indiana Public Schools and Current Liability Insurance Practices of the Indiana Public School Corporations," unpublished doctoral dissertation, Indiana University, 1959.

366. Schuyler v. Board of Education of Union Free School District No. 7, 239 N.Y.S. (2d) 769 (1963).

367. Schroeder v. Community Unit School District, 200 N.E. (2d) 505 (1966).

368. Senate Fact Finding Committee. "Governmental Tort Liability--Progress Report to the Legislature," Senate of the State of California, 1963.

369. Session Laws of Kansas, 1963, C.411, secs. 2-3.

370. Shartle v. City of Minneapolis, 17 Minn. 284 (1871).

371. Sherwood v. Moxee School District, 363 P. (2d) 138 (1961).

372. Shields v. School District of Pittsburgh, 184 A. (2d) 240 (1962).

373. Silverman v. City of New York and Board of Education, 211 N.Y.S. (2d) 560 (1961).

374. Simpson v. Harlem River House Children's Center, 208 N.Y.S. (2d) 133 (1960).

375. (The)Siren, 74 U.S. 152, 154 (1868).

376. Slovin v. Ganger, 200 A. (2d) 565 (1964).

377. Smith, Allen F. "Municipal Tort Liability," Michigan Law Review XLVIII p. 51 (1950).

378. Smith, Stanley, Assistant Manager, Midwestern Office, Insurance Rating Board, Chicago, Illinois. Interview and correspondence, August-September, 1968.

379. Smith-Hurd Illinois Statutes Annotated, C. 122, sec. 821-831.

380. Smith, Samuel Stuart. "School Board Policies and Administration Practices Related to Insurance Programs in 256 Public School Districts in New York State," unpublished Ed.D. thesis, New York, New York, Columbia University, 1966.

381. Smith v. Consolidated School District, 408 S.W. (2d) 50 (1966).

382. Snider v. City of St. Paul, 51 Minn. 466, 53 N.W. 763 (1892).

383. Snowden v. Kittitas County School District No. 401, 231 P. (2d) (1951).

384. Soich, John E. "Analysis of Tort Liability of School Districts, and/or its Officers, Agents and Employees in Conducting Programs of Physical Education, Recreation and Athletics," unpublished Ed.D. thesis, Pittsburgh, 1964.

385. South Carolina: Code of Laws of South Carolina (1962), Tit. 21, C. 16, art. 5, secs. 21840.4.

386. Southard, Thomas B. "Relationships of School Board Practices to Tort Liability Immunity in Selected Ohio Schools," unpublished Ph.D. thesis, Ohio State University, 1962.

387. Spanel v. Mounds View School District No. 621, 118 N.W. (2d) 795 (1962).

388. Spell, Reginald V. *Public Liability Hazards*, Indianapolis, Indiana, The Rough Notes Company, 1956.

389. Springborg, Robert. "A Study of Governmental Immunity in the State of Minnesota," unpublished duplicated paper, Macalaster College, St. Paul, Minnesota, 1964.

390. Stason, E. Blythe. "Governmental Tort Liability Symposium," N.Y.U.L. Rev. 1321-1461 (1954).

391. Stephens v. Jackson County Board of Education and/or North Carolina State Board of Education, 94 S.E. (2d) 372 (1956).

392. Stephens v. Natchitoches Parish School Board, 238 La. 388, 115 So. (2d) 793 (1959).

393. Stevens v. Central School District, 270 N.Y.S. (2d) 23 (1966).

394. Stovall v. Toppenish School District No. 49, 188 P. 12 (1920).

395. Streikler v. Board of Education of City of New York, 225 N.Y.S. (2d) 602 (1962).

396. Stone v. Arizona Highway Commission, 381 P. (2d) 107 (1963).

397. Sumoga v. Tuscon High School District, 281 P. (2d) 104 (1955).

398. Sunshine v. City School District of the City of Long Beach 212 N.Y.S. (2d) 851 (1961).

399. Supler v. The School District of North Franklin Township, 182 A. (2d) 535 (1962).

400. Swaincomb v. Combs, 115 A. (2d) 468 (1955).

401. Tannenbaum v. Bd. of Ed. C.H.S. No. 3, Town of Hempstead, 255 N.Y.S. 522 (1964).

402. Tapscott v. Page, 17 Alaska 507 (1958).

403. Tardiff v. Shorline Sch. Dist. 411 P. (2d) 889 (1966).

404. Taylor v. Kevlin, 1 A. (2d) 433 (1938).

405. Tennessee Code Annotated with 1967 Pocket Supplement, Tit. 49, C. 17, sec. 49-1763, and, C. 22, sec. 49-2214.

406. Terry v. Mount Zion School District No. 3, 174 N.E. (2d) 701 (1961).

407. Tesone v. School District No. Re-2 In County of Boulder, 234 P. (2d) 82 (1963).

408. Texas: Vernon's Texas Session Law Service, 58th Legislature, C. 24, sec. 1. See also Hinsley, John Carroll. The Handbook of Texas School Law, Austin, Texas, The Steck Company, 1958.

409. Themmes, Fred, Superintendent, Casualty-Auto Department, The St. Paul Insurance Companies. Series of interviews and conversations, August-September, 1968.

410. Tholkes v. Decock, 125 Minn. 507, 147 N.W. 648 (1914).

411. Thomas v. Broadlands Community Consolidated School District No. 201, 109 N.E. (2d) 636 (1952).

412. Tietz v. Los Angeles Unified School District, 238 A.C.A. 1028 (1965).

413. Titus v. Lindberg, 228 A. (2d) 65 (1967).

414. Torres v. Board of Education of City of New York, 216 N.Y.S. (2d) 875, 13 App. Div. 948 (1961).

415. Travers, Robert M. An Introduction to Educational Research, 2nd ed. New York, New York, The Macmillan Company, 1966.

416. Treece v. Shawnee Comm. Sch. Dist. No. 84, 233 N.E. (2d) 549 (1968).

417. Turner v. Gastonia City Board of Ed., 109 S.E. (2d) 211 (1959).

418. Tymkowicz v. San Jose Unified School District, 312 P. (2d) 388 (1957).

419. University of the State of New York, The State Education Department, Albany, New York, "Safety in Physical Education for Junior and Senior High School Boys."

420. Van Gaasbeck v. Webatuck Central School District No. 1 of Town of Amenia, 287 N.Y.S. (2d) 77 (1967).

421. Vendrell v. School District, 397 P. (2d) 406 (1962).

422. Vermont Statutes Annotated (1963), Tit. 29, C. 55, sec. 921, 1403, 1406.

423. Virginia: Code of Virginia (1949), Tit. 22, C. 13, art. 2, secs. 22-285 and 290.

424. Vitagliano v. Board of Education of City of New York, 208 N.Y.S. (2d) 1015 (1960).

425. Walker, Lawrence N. California Law Review, p. 404, 1961.

426. Walters v. Board of Education of City School District, City of Rome 194 N.Y.S. (2d) 749 (1960).

427. Ward v. School District No. 18 of Tillamook County, 73 P. (2d) 379 (1957).

428. Washington: Revised Code of Washington, Tit. 4, C 4.08, sec. 4.08.120; Tit. 28, C. 28.58, sec. 28.58.100; Tit. 28, C. 28.76, sec. 28.76.410; and, 1963 Supplement, C. 159.

429. Waycross v. Bates, 151 S.E. (2d) 524 (1966).

430. Wayman v. Bd. of Ed., 215 N.E. (2d) 394 (1966).

431. Wilber v. City of Binghamton, 73 N.E. (2d) 263 (1947).

432. Weltsch v. Town of Start, 65 Minn. 67 N.W. 648 (1896).

433. West v. Board of Education of City of New York, 187 N.Y.S. (2d) 88 (1959).

434. West v. Board of Education of City of New York, 187 N.Y.S. (2d) 88 (1959).

435. West Virginia Code of 1961 with 1967 Cumulative Supplement, C. 18, art. 5, sec. 1774.

436. Wetterer, Charles M. "The Vulnerability of School Districts in New York State in the Employment of Teacher Aids," unpublished Ed.D. thesis, New York University, March, 1967.

437. Wherry, Ralph, and Newman, Monroe. *Insurance and Risk*, New York, New York, Holt, Rinehart and Winston Inc., 1963.

438. Wilhelm v. Board of Education of the City of New York, 227 N.Y.S. (2d) 791 (1962).

439. Williams v. City of Detroit, 364 Mich. 321, 111 N.W. (2d) 1 (1961).

440. Williams v. Randolph Hospital, 75 S.E. (2d) 303 (1953).

441. Williamson v. City of Bloomington and Bloomington Public School District No. 271, Case 609208, Fourth Judicial District, County of Hennepin, State of Minnesota (1966).

442. Wisconsin: West's Wisconsin Statutes Annotated, Title 13, C. 101, 01-101.29, and, Tit. 6 C. 40, Sec. 40.57.

443. Wood v. Board of Education of Danville, 412 S.W. (2d) 877 (1967).

444. Wood, Lewis Chapman. "A Study of Tort Liability in Michigan School Districts," unpublished Ed.D. thesis, East Lansing, Michigan, Michigan State University (1962).

445. Woodsmal v. Mount Diablo Unified School District, 10 Cal. Rptr. 447, 188 P. (2d) 262 (1961).

446. Wooster v. Arbenz, 116 Ohio St. 281, 156 N.E. 210 (1927).

447. Wright v. Arcade School Dist., 40 Cal. Rptr. 812 (1964).

448. Wright v. City of San Bernardino High School District, 263 P. (2d) 25, (1953).

449. Wyoming Statutes (1957) with 1967 Cumulative Supplement, Tit. 21, C. 3, art. 1, sec. 21-154,155, 158, 159.

450. Ziegler v. Santa Cruz City High School District, 335 P. (2d) (1959); appealed 193 Cal. App. (2d) 200 (1961).

APPENDIX A

LAWS OF MINNESOTA

CHAPTER 798 - S. F. No. 758

/Coded/

An act relating to tort liability of cities, villages, boroughs, counties, towns, public authorities, certain public corporations, school districts, and other political subdivisions of the state; repealing Minnesota Statutes 1961, Sections 112.70; 12.41; 115.07, Subdivision 5; 360.33, Subdivision 18; 412.221, Subdivision 4; 418.11; 465.62; 465.09 to 465.121; 471.42 and 471.43.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. /466.01/ Municipalities; tort liability; definitions. Subdivision 1. For the purposes of this act, "municipality" means any city, whether organized under home rule charter or otherwise, any village, borough, county, town, public authority, public corporation, special district, school district, however organized, or other political subdivision.

Subd. 2. For the purposes of this act, the "governing body of a town" means the board of supervisors thereof; "school district" includes an unorganized territory as defined in Minnesota Statutes 1961, Section 120.02, Subdivision 17.

Sec. 2. /466.02/ Tort liability. Subject to the limitations of this act, every municipality is subject to liability for its torts and those of its officers, employees and agents acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.

Sec. 3. /466.03/ Exceptions. Subdivision 1. Scope. Section 2 does not apply to any claim enumerated in this section. As to any such claim every municipality shall be liable only in accordance with the applicable statute and where there is no such statute, every municipality shall be immune from liability.

Subd. 2. Workmen's compensation claims. Any claim for

Changes or additions indicated by italics, deletions by strikeout.

injury to or death of any person covered by the workmen's compensation act.

Subd. 3. Tax claims. Any claim in connection with the assessment and collection of taxes.

Subd. 4. Accumulations of snow and ice. Any claim based on snow or ice conditions on any highway or other public place, except when the condition is affirmatively caused by the negligent acts of the municipality.

Subd. 5. Execution of statute. Any claim based upon an act or omission of an officer or employee, exercising due care, in the execution of a valid or invalid statute, charter, ordinance, resolution, or regulation.

Subd. 6. Discretionary acts. Any claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

Subd. 7. Other immunity. Any claim against a municipality as to which the municipality is immune from liability by the provisions of any other statute.

Sec. 4. [466.04] Maximum liability. Subdivision 1. Limits, punitive damages. Liability of any municipality on any claim within the scope of this act shall not exceed

a. $25,000 when the claim is one for death by wrongful act or omission and $50,000 to any claimant in any other case;

b. $300,000 for any number of claims arising out of a single occurrence.

No award for damages on any such claim shall include punitive damages.

Subd. 2. Inclusions. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

Subd. 3. Disposition of multiple claims. Where the amount awarded to or settled upon multiple claimants exceeds $300,000, any party may apply to any district court to apportion to each claimant his proper share of the total amount limited by Subdivision 1 of this Section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims arising out of the occurrence.

Sec. 5. /466.05/ Notice of claim. Subdivision 1. Notice required. Every person who claims damages from any municipality for or on account of any loss or injury within the scope of Section 2 shall cause to be presented to the governing body of the municipality within 30 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, and the amount of compensation or other relief demanded. Failure to state the amount of compensation or other relief demanded does not invalidate the notice; but in such case, the claimant shall furnish full information regarding the nature and extent of the injuries and damages within 15 days after demand by the municipality. No action therefor shall be maintained unless such notice has been given and unless the action is commenced within one year after such notice. The time for giving such notice does not include the time, not exceeding 90 days, during which the person injured is incapacitated by the injury from giving the notice.

Subd. 2. Claims for wrongful death; notice. When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin, or the consular office of the foreign county of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death; but if the person for whose death the claim is made has presented a notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

Sec. 6. /466.06/ Liability insurance. The governing body of any municipality may procure insurance against liability of the municipality and its officers, employees, and agents for damages resulting from its torts and those of its officers, employees, and agents, including torts specified in Section 3 for which the municipality is immune from liability; and such insurance may provide protection in excess of the limit of liability imposed by Section 4. If the municipality has the authority to levy taxes, the premium costs for such insurance may be levied in excess of any per capita or millage tax limitation imposed by statute or charter. Any independent board or commission in the municipality having authority to disburse funds for a particular municipal function without approval of the governing body may similarly procure liability insurance with respect to the field of its operation. The procurement of such insurance constitutes a waiver of the defense of governmental immunity to the extent of the liability stated in the policy but has no effect on the liability of the municipality beyond the coverage so provided.

Sec. 7. /466.07/ Indemnification. Subdivision 1. Authority to indemnify. The governing body of any municipality may defend, save harmless, and indemnify any of its officers and employees, whether elective or appointive, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty. Any independent board or commission of the municipality having authority to disburse funds for a particular function without approval of the governing body may similarly defend, save harmless, and indemnify its officers and employees against such tort claims or demands.

Subd. 2. Exceptions. The provisions of Subdivision 1 do not apply in case of malfeasance in office or silful or wanton neglect of duty.

Subd. 3. Effect on other laws. This section does not repeal or modify Minnesota Statutes 1961, Sections 471.44, 471.45 and 471.86.

Sec. 8. /466.08/ Compromise of claims. The governing body of any municipality may compromise, adjust and settle tort claims against the municipality for damages under Section 2 and may, subject to procedural requirements imposed by law or charter, appropriate money for the payment of amounts agreed upon. When the amount of a settlement exceeds $2,500, the settlement shall not be effective until approved by the district court.

Sec. 9. /466.09/ Payment of judgments. When a judgment is entered against or a settlement is made by a municipality for a claim within the scope of Section 2, payment shall be made and the same remedies shall apply in case of non-payment as in the case of other judgments or settlements against the municipality. If the municipality has the authority to levy taxes and the judgment or settlement is unpaid at the time of the annual tax levy, the governing body shall, if it finds that other funds are not available for payment of the judgment, levy a tax sufficient to pay the judgment or settlement and interest accruing thereon to the expected time of payment. Such tax may be levied in excess of any per capita or millage tax limitation imposed by statute or charter.

Sec. 10. /466.10/ Prior claims. This act does not

apply to any claim against any municipality arising before the effective date of this act. Any such claim may be presented and enforced to the same extent and subject to the same procedure and restrictions as if this act had not been adopted.

Sec. 11. [466.11] Relation to charters and special laws. This act is exclusive of and supersedes all home rule charter provisions and special laws on the same subject heretofore and hereafter adopted.

Sec. 12. [466.12] School districts and certain towns. Subdivision 1. Sections 1 to 11, except as otherwise provided for in this section, do not apply to any school district, however organized, or to a town not exercising the powers of a village under the provisions of Minnesota Statutes 1961, Section 368.01, as amended.

Subd. 2. The doctrine of "governmental immunity from tort liability" as a rule of the decisions of the courts of this state is hereby enacted as a rule of statutory law applicable to all school districts and towns not exercising powers of villages in the same manner and to the same extent as it was applied in this state to school districts and such towns on and prior to December 13, 1962.

As used in this subdivision the doctrine of "governmental immunity from tort liability" means the doctrine as part of the common law of England as adopted by the courts of this state as a rule of law exempting from tort liability school districts and towns not exercising the powers of villages regardless of whether they are engaged in either governmental or proprietary activities, subject however, to such modifications thereof made by statutory enactments heretofore enacted, and subject to the other provisions of this section.

Subd. 3. A school district or a town not exercising the powers of a village may procure insurance as provided for in section 6, and if a school district or town not exercising the powers of a village procures such insurance it shall otherwise be subject to all the terms and provisions of sections 2 to 9 to the extent of the liability coverage afforded. Cancellation or expiration of any liability policy shall restore immunity as herein provided as of the date of such cancellation or expiration.

Subd. 4. This section is in effect on January 1, 1964, but all of its provisions shall expire on January 1, 1970.

Sec. 13. [466.13] Drainage and related public corporations. Subdivision 1. Sections 1 to 11, except as otherwise provided for in this section, do not apply to any drainage system established under Minnesota Statutes 1961, Chapter 106; the improvement of waters under Minnesota Statutes 1961, Chapter 110, when done by a municipality; drainage and conservancy districts established under Minnesota Statutes 1961, Chapter 111; a watershed district established under Minnesota Statutes 1961, Chapter 112; and a soil conservation district established under Minnesota Statutes 1961, Chapter 40.

Subd. 2. The doctrine of "governmental immunity from tort liability" as a rule of the decisions of the courts of this state is hereby enacted as a rule of statutory law applicable to the instrumentalities of government enumerated in subdivision 1 to the same extent as it was applied in this state to such instrumentalities on and prior to December 13, 1962.

As used in this subdivision the doctrine of "governmental immunity from tort liability" means the doctrine as a part of the common law of England as adopted by the courts of this state as a rule of law exempting from tort liability the instrumentalities of government named in subdivision 1, subject, however, to such modifications thereof made by statutory enactments heretofore enacted, and subject to the other provisions of this section.

Subd. 3. An instrumentality of government as named in subdivision 1 may procure insurance as provided for in section 6, and if such instrumentality of government procures such insurance it shall otherwise be subject to all provisions and terms of sections 2 to 9 to the extent of the liability coverage afforded. Cancellation or expiration of any liability policy shall restore immunity as herein provided as of the date of such cancellation or expiration.

Subd. 4. This section is in effect on January 1, 1964, but all of its provisions shall expire on January 1, 1970.

Sec. 14. [466.14] Prior law. The doctrine of "governmental immunity from tort liability" as a rule of decisions of the courts of this state is hereby enacted as a rule of statutory law and shall be applicable to all matters and all of the instrumentalities of government enumerated in section 1 in the same manner and to the same extent as it was applied in this state on and prior to December 13, 1962. This section applies to matters arising on and after such date.

As used in this section the doctrine of "governmental immunity from tort liability" means the doctrine as a part of the common law of England as adopted by the courts of this state as a rule of law exempting from tort liability the instrumentalities of government named in section 1, subject, however, to such modifications thereof made by statutory enactments heretofore enacted.

Sec. 15. [466.15] Civil damages act, application. This act does not modify Minnesota Statutes, Section 340.95.

Sec. 16. [466.16] Repealer. Subdivision 1. Subject to the provisions of section 10, Minnesota Statutes 1961, Sections 12.41; 115.07, Subdivision 5; 360.033, Subdivision 2; 399.04, Subdivision 18; 412.221, Subdivision 4; 418.11; 465.62; 465.09 to 465.121; 471.42 and 471.43 are hereby repealed.

Subd. 2. Minnesota Statutes 1961, Section 112.70 is hereby repealed.

Sec. 17. [466.17] Effective date. Section 14 is in effect upon the adjournment of the 1963 regular session of the Minnesota legislature, but its provisions shall expire on December 31, 1963; Section 16, Subdivision 2, is in effect on January 1, 1968; the other provisions of the act are in effect on January 1, 1964.

Approved May 22, 1963.

APPENDIX B

TORT LIABILITY AND INSURANCE COVERAGE IN CALIFORNIA SCHOOL DISTRICTS

Citations from the California Education Code

Article 5. Liability and Insurance - No Personal Liability for Pupil Injuries

1041. No member of the governing board of any school district shall be held personally liable for accidents to children going to or returning from school, or on the playgrounds, or in connection with school work.

Cross Reference: For liability of certificated employees, see Sec. 13551.

For Duty of district attorney to defend suits, see Secs. 906, 1043.

For liability of officers and employees, see Government Code Sec. 1950 et seq.

No Personal Liability Without Negligence

1042. No member of the governing board of any school district shall be held personally liable for the death of, or injury to, any pupil enrolled in any school of the district, resulting from his participation in any classroom or other activity to which he has been lawfully assigned as a pupil in the school unless negligence on the part of the member of the governing board is the proximate cause of injury or death.

Cross Reference: For liability of member for death or injury to voluntary pupils, see Sec. 15516.

For responsibility for willful acts and negligence, see Civil Code Sec. 1714 et seq.

For liability of officers and employees, see Government Code Sec. 1950 et seq.

Duty of District Attorney to Defend Board Members or District Employees

1043. If suit is brought against any member of the governing board of any school district as an individual, for any act, or omission, in the line of his official duty as member of the board, or if suit is brought against any employee of any school district for any act performed in the course of his employment, the district attorney of the county shall defend the member of the board or the individual employee upon request of the governing board of the school district, without fee or other charge.

Cross Reference: For liability, see Secs. 902, 903, 1041, 1042.

Governing Board shall Carry Liability Insurance

1044. The governing board of any school district shall insure against the liability (other than a liability which may be insured against under the provisions of Divisions 4 and 5 of the Labor Code) of the district and against the personal liability of the members of the board and of the officers and employees of the district, for damages to property or damage by reason of the death of, or injury to, any person or persons, as the result of any negligent act by the district, or by a member of the board, or any officer or employee when acting within the scope of his office or employment, and may also insure against the personal liability of the members of the board or any officer or employee of the district as an individual, for any act or omission performed in the line of official duty. The insurance may be written in any insurance company authorized to transact the business of insurance in the State, or in a non-admitted insurer to the extent and subject to the conditions prescribed by Section 1763 of the Insurance Code.

(Amended by Stats. 1959, Ch. 2167, and by Stats. 1961, Ch. 136.)

Cross Reference: For right to provide fund in lieu of insurance, see Sec. 1045.

For liability for negligence, see Civil Code Sec. 1714.

For insuring against liability with State Compensation Insurance Fund, see Insurance Code Sec. 11870.

For tort liability, see Government Code Sec. 53050 et seq.

For liability insurance, see Government Code Sec. 53056.

Fund in Lieu of Liability Insurance

- 1045. In districts situated within or partly within cities having a population of more than 500,000 any board of education may provide, from its own funds, for the purpose of covering the liability of the district, its officers, agents and employees, in lieu of carrying insurance in insurance companies as provided in Section 1044. Nothing contained herein shall be construed as prohibiting the board of education of the district from providing protection against such liability partly by means of its own funds and partly by means of insurance written by insurance companies as provided in Section 1044.

Liability for Personal Injury and Property Damage

903. The governing board of any school district is liable as such in the name of the district for any judgment against the district on account of injury to person or property arising because of the negligence of the district, or its officers or employees.

(Amended by Stats. 1959, Ch. 1727)

Cross Reference: For insurance against liability of board members and personnel, see Secs. 812, 857, 1044, 1045.

For liability of certificated employees, see Sec. 13551.

For temporary structures, see Secs. 15512-15515.

For absence of personal liability to voluntary pupils, see Sec. 15516.

For tort liability of local agencies, see Government Code Secs. 53050-53057.

Payment of Judgments

904. The governing board of any school district shall pay any judgment for debts, liabilities, or damages out of the school funds to the credit of the district, subject to the limitation on the use of the funds provided in the Constitution. If any judgment is not paid during the tax year in which it was recovered:

(a) And if, in the opinion of the board, the amount is not too great to be paid out of taxes for the ensuing tax year, the board shall include in its budget for the ensuing tax year a provision to pay the judgment, and shall pay it immediately upon the obtaining of sufficient funds for that purpose.

(b) If, in the opinion of the board, the amount of the judgment is so great that undue hardship will arise if the entire amount is paid out of taxes for the next ensuing tax year, the board shall provide for the payment of the judgment in not exceeding three annual installments with interest thereon, at a rate not exceeding 4 percent per annum, up to the date of each payment, and shall include provision for the payment in each budget not exceeding three consecutive tax years next ensuing. Each payment shall be of an equal portion of the principal of the judgment.

Cross Reference: For determination of district taxes, see Secs. 20701-20901, 21001.

For district budget, see Secs. 20601-20606, 20652, 20952.

For payments from school districts funds, see Secs. 21101-21103.

For payment of judgments against local agencies, see Government Code Secs. 50170-50175.

Duty of District Attorney to Defend Suits

906. The district attorney of the county in which a school district is located shall, without fee or other charge, defend the district in any suit brought for injury to any pupil, for any cause.

Cross Reference: For liability of government board, see Secs. 904, 1041, 1042.

Article 7. Rights and Duties of Certificated Employees

Liability for Injuries to Pupils

13551. No superintendent, principal, teacher, or other employee of a school district employed in a position requiring certification qualifications shall be held personally liable for the death of, or injury to, any pupil enrolled in any school of the district, resulting from the participation of the pupil in any classroom or other activity to which he has been lawfully assigned as a pupil in the school unless negligence on the part of the employee is the proximate cause of the injury or death.

Cross Reference: For non-liability of member of governing board, see Sec. 1041.

For liability of governing board, see Sec. 903.

For non-liability for death or injury to voluntary pupils, see Sec. 15516.

For non-liability for injury resulting from civil defense and fire drills, see Sec. 31301.

For responsibility for willful acts and negligence, see Civil Code Sec. 1714.

Liability of Governing Board Members of Injury Resulting From Use of Temporary Structures

15512. No member of the governing board shall be held personally liable for any damage or injury to person or property as a result of the use of tents or other temporary structures, except in case of his own personal negligence or misconduct.

Cross Reference: For responsibility for willful acts and negligence, see Civil Code Sec. 1714.

For liability of officers and employees, see Government Code Sec. 1950 et seq.

Liability of Governing Board Members for Continued Use of Buildings

15513. If, at the election, neither the issuance of bonds nor the increase of the tax rate is authorized, and the other proposition on the ballot does not receive a majority of the votes cast thereon in favor thereof, no member of the governing board of the district shall be held personally liable for any injury to person or damage to property as a result of the continued use of any building or buildings referred to in the resolution or notice calling the election.

Cross Reference: For responsibility for willful acts and negligence, see Civil Code Sec. 1714.

Liability of Governing Board Members for Use of Building

15514. No member of the governing board of the district shall be held personally liable for injury to person or damage to property by reason of the use of any building.

Cross Reference: For responsibility for willful acts and negligence see Civil Code Sec. 1714.

For liability of officers and employees, see Government Code Sec. 1950 et seq.

Liability of School District

15515. Nothing in Sections 15512, 15513, or 15514 shall be construed as relieving any school district of any liability for injury to person or damage to property imposed by law.

Cross Reference: For responsibility for willful acts and negligence, see Civil Code Sec. 1714.

For presentation of claims, see Government Code Sec. 800 et seq.

When Governing Board Member or Employee Not Liable for Death, Injury or Damage of Pupil

15516. No member of the governing board of any school district or employee of any school district shall be held personally liable for the death or injury of any pupil above the compulsory school age or for damage to the property of any such pupil resulting from his voluntary attendance upon classes on premises and not under the management and control of the governing board of the district, or resulting from his voluntary attendance in building not owned, rented or leased by the school district or upon field trips, if such death, injury, or damage is caused by the dangerous or defective condition of the premises or buildings in which such classes are maintained or which are entered on field trips.

Cross Reference: For responsibility for willful acts and negligence, see Civil Code Sec. 1714.

For liability of officers and employees, see Government Code Sec. 1950 et seq.

Article 1.5. Claims

(Article 1.5 added by Stats. 1959, Ch. 1727)

Claims for Money or Damages

926. All claims for money or damages against a school district are governed by Chapter 2 (commensing with Section 700) of Division 3.5 of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.

Authorization for Liability Insurance; Payment of Cost

8112. The governing board of a district maintaining courses in driver education and automobile driver training may insure against any liability arising out of the use of motor vehicles in connection with such courses. The cost of such insurance shall be paid from available school district funds.

Cross Reference: For school districts liability for negligent operation of motor vehicles, see Vehicle Code Sec. 17000-17003.

For automobile driver education and training, see Vehicle Code Sec. 1657.

For liability of officers and employees, see Government Code Sec. 1950 et seq.

For responsibility for willful or negligent acts, see Civil Code Sec. 1714.

Insurance Program and Supervision for Schools Offering Flight Experience

8404. The Division of Aeronautics is authorized to make available to public schools offering actual flight experience as part of the rugular curriculum a basic insurance program and to assure that adequate supervision and precautionary measures are taken by the flight school operators contracted to provide services for public school students. The governing board of any school district offering actual flight experience as part of the regular curriculum may participate in the basic insurance program provided by the commission and pay from the funds of the district a pro rata share of the cost of the insurance program.

(Amended by Stats. 1961, Ch. 2071.)

Cross Reference: For references to the Division of Aeronautics, see Public Utilities Code Sec. 21201 et seq.

Medical and Hospital Services for Athletic Program

11709. The governing board of any school district or districts may provide, or make available, medical or hospital service, or both, through non-profit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from authorized insurer, for pupils of the district or districts injured while participating in athletic activities under the jurisdiction of, or sponsored or controlled by, the district or districts or the authorities of any school of the district or districts. The cost of the insurance or membership may be paid, from the funds of the district or districts, or by the insured pupil, his parent or guardian.

The insurance may be purchased from, or the membership may be taken in, only such companies or corporations as are authorized to do business in this State.

Cross Reference: For issuance of blanket policies of disability insurance, see Insurance Code Sec. 10270.

For issuance of blanket hospital service contracts, see Insurance Code Sec. 11512.4.

Medical and Hospital Services for Pupils

11711. The governing board of any school district or districts which does not employ at least five physicians as full-time supervisors of health, or the equivalent thereof, may provide, or make available, medical or hospital service, or both through non-profit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance or through policies of liability insurance from authorized insurers, for injuries to pupils of the district or districts arising out of accidents occurring while in or on buildings and other premises of the district or districts during the time such pupils are required to be therein or thereon by reason of their attendance upon a regular day school of such district or districts or while being transported by the district or districts to and from school or other place of instruction, or while at any other place as

an incident of school-sponsored activities and while being transported to, from and between such places. No pupils shall be compelled to accept such service without his consent, or if a minor without the consent of his parent or guardian. The cost of the insurance or membership may be paid, from the funds of the district or districts, or by the insured pupil, his parent or guardian.

Such insurance may be purchased from, or such membership may be taken in, only such companies or corporations as are authorized to do business in California.

Cross Reference: For issuance of blanket hospital service contracts, see Insurance Code Sec. 11512.4.

APPENDIX C

SENATE FILE 710

AN ACT
RELATING TO THE TORT LIABILITY OF GOVERNMENTAL SUBDIVISIONS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA

Section 1. As used in this Act, the following terms shall have the following meanings:

1. "Municipality" means city, town, county township, school district, and any other unit of local government.

2. "Governing body" means the council of a city or town, county board of supervisors, board of township trustees, local school board, and other boards and commissions exercising quasi-legislative, quasi-executive and quasi-judicial power over territory comprising a municipality.

3. "Tort" means every civil wrong which results in wrongful death or injury to person or injury to property and includes but is not restricted to actions based upon negligence, breach of duty, and nuisance.

Sec. 2. Except as otherwise provided in this Act, every municipality is subject to liability for its torts and those of its officers, employees, and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

Sec. 3. In any action subject to the provisions of

this Act or section three hundred eighty-nine point twelve (389.12) of the Code, an affirmative showing that the injured party had actual knowledge of the existence of the alleged obstruction, disrepair, defect, accumulation, or nuisance at the time of the occurrence of the injury, and a further showing than an alternate safe route was available and known to the injured party, shall constitute a defense to the action.

Sec. 4. The liability imposed by section two (2) of this Act shall have no application to any claim enumerated in this section. As to any such claim, a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such claims and, in the absence of such express statute, the municipality shall be immune from liability.

1. Any claim by an employee of the municipality which is covered by the Iowa workmen's compensation law.

2. Any claim in connection with the assessment or collection of taxes.

3. Any claim based upon an act or omission of an officer or employee, exercising due care, in the execution of a statute, ordinance, or officially adopted resolution, rule, or regulation of a governing body.

4. Any claim against a municipality as to which the municipality is immune from liability by the provisions of

any other statute or where the action based upon such claim has been barred or abated by operation of statute or rule of civil procedure.

The remedy against the municipality provided by section two (2) of this Act for injury or loss of property or personal injury or death resulting from any act or omission of an officer or employee in the execution of a statute or ordinance, or officially adopted resolution, rule or regulation of a governing body while acting in the scope of his office or employment shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the officer or employee whose act or omission gave rise to the claim, or his estate.

Sec. 5. Every person who claims damages from any municipality for or on account of any wrongful death, loss or injury within the scope of section two (2) of this Act shall commence an action therefor within three (3) months, unless said person shall cause to be presented to the governing body of the municipality within sixty (60) days after the alleged wrongful death, loss or injury a written notice stating the time, place, and circumstances thereof and the amount of compensation or other relief demanded. Failure to state the amount of compensation or other relief demanded shall not invalidate the notice; providing, the claimant shall furnish full information regarding the nature

4

and extent of the injuries and damages within fifteen (15) days after demand by the municipality. No action therefor shall be maintained unless such notice has been given and unless the action is commenced within two (2) years after such notice. The time for giving such notice shall include a reasonable length of time not to exceed ninety (90) days, during which the person injured is incapacitated by his injury from giving such notice.

Sec. 6. When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin, or the consular officer of the foreign country of which the deceased was a citizen, within one (1) year after the alleged injury resulting in such death; but if the person for whose death the claim is made has presented a notice that would have been sufficient had he lived, an action for wrongful death may be brought without additional notice.

Sec. 7. The governing body of any municipality may purchase a policy of liability insurance insuring against all or any part of liability which might be incurred by such municipality or its officers, employees and agents under the provisions of section two (2) of this Act and may similarly purchase insurance covering torts specified in section four (4) of this Act. The premium costs of such insurance may be levied in excess of any millage tax limitation imposed by statute. Any independent or autonomous board or commission in the municipality having authority to disburse funds for a particular municipal function without approval of the governing body may similarly procure liability insurance within the field of its operation. The procurement of such insurance constitutes a waiver of the defense of governmental immunity as to those exceptions listed in section four (4) of this Act to the extent stated in such policy but shall have no further effect on the liability of the municipality beyond the scope of this Act. The existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of the plaintiff, or lack of any such insurance, shall not be material in the trial of any action brought against the governing body of any municipality, or their officers, employees or agents and any reference to such insurance, or lack of same, shall be grounds for a mistrial.

Sec. 8. The governing body shall defend any of its officers and employees, whether elected or appointed and, except in cases of malfeasance in office or willful or wanton neglect of duty, shall save harmless and indemnify such officers and employees against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty. Any independent or autonomous board or commission of a municipality having authority to disburse funds for a particular municipal function without approval of the governing body shall similarly defend, save harmless and indemnify its officers and employees against, such tort claims or demands   This section is intended to confer power in addition to that conferred by section three hundred sixty-eight A point one (368A.1) of the Code.

Sec. 9. The governing body of any municipality may compromise, adjust and settle tort claims against the municipality, its officers, employees and agents, for damages under sections two (2) or eight (8) of this Act and may appropriate money for the payment of amounts agreed upon.

Sec. 10. When a final judgment is entered against or a settlement is made by a municipality for a claim within the scope of sections two (2) or eight (8) of this Act, payment shall be made and the same remedies shall apply in the case of nonpayment as in the case of other judgments against the municipality. If said judgment or settlement is unpaid at the time of the adoption of the annual budget, it shall budget an amount sufficient to pay the judgment or settlement together with interest accruing thereon to the expected date of payment. Such tax may be levied in excess of any millage limitation imposed by statute.

Sec. 11. This Act shall have no application to any occurrence or injury claim or action arising prior to its effective date.

Sec. 12. Section six hundred fourteen point one (614.1), Code 1966, is hereby amended by striking therefrom subsection one (1), and by striking therefrom subsection four (4) and inserting in lieu thereof the following: Those against a sheriff or other public officer for the nonpayment of money collected on execution within three (3) years of collection.

Sec. 13. Sections three hundred twenty-one point four hundred ninety-five (321.495), three hundred twenty-one point four hundred ninety-six (321.496), and three hundred twnety-one point four hundred ninety-seven (321.497) of the Code are hereby repealed.

Sec. 14. This Act, being deemed of immediate importance, shall be in full force and effect on January 1, 1968, after its passage and publication in The Clinton Herald, a newspaper published at Clinton, Iowa and in The Cedar Rapids Gazette, a newspaper published at Cedar Rapids, Iowa.

ROBERT D. FULTON
President of the Senate

MAURICE E. BARINGER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 710, Sixty-second General Assembly.

Approved____________1967

AL MEACHAM
Secretary of the Senate

HAROLD E. HUGHES
Governor

APPENDIX D

OREGON GOVERNMENTAL LIABILITY ACT

Tort Actions Against Public Bodies

30.260 Definitions for 30.260 to 30.300. As used in ORS 30.260 to 30.300, unless the context requires otherwise:

(1) "Governing body" means the group or officer in which the controlling authority of any public body is vested.

(2) "Public body" means the state and any department, agency, board or commission of the state, any city, county, school district or other political subdivision or municipal or public corporation and any instrumentality thereof.

Note: ORS 30.260 to 30.300 take effect July 1, 1968.

30.265 Scope of liability of public body for torts. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is liable for its torts and those of its officers, employees and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

(2) Subsection (1) of this section does not apply to:

(a) Any claim for injury to or death of any person or injury to property resulting from an act or omission of an officer, employee or agent of a public body when such officer, employee or agent is immune from liability.

(b) Any claim for injury to or death of any person covered by the Workmen's Compensation Law.

(c) Any claim in connection with the assessment and collection of taxes.

(d) Any claim based upon an act or omission of an officer, employee or agent, exercising due care, in the execution of a valid or invalid statute, charter, ordinance, resolution or regulation.

(e) Any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

(f) Any claim against a public body as to which the public body is immune from liability or its liability is limited by the provisions of any other statute.

(3) As to any claim enumerated in subsection (2) of this section, a public body shall be liable only in accordance with any other applicable statute.

(4) ORS 30.260 to 30.300 do not apply to any claim against any public body arising before July 1, 1968. Any such claim may be presented and enforced to the same extent and subject to the same procedure and restrictions as if ORS 30.260 to 30.300 had not been adopted.
/1967 c.627 2, 3, 10/
Note: See note under ORS 30.260

30.270 Amount of liability. (1) Liability of any public body on any claim within the scope of ORS 30.260 to 30.300 shall not exceed:

(a) $25,000 when the claim is one for damage to or destruction of property and $50,000 to any claimant in any other case.

(b) $300,000 for any number of claims arising out of a single occurrence.

(2) No award for damages on any such claim shall include punitive damages. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

(3) Where the amount awarded to or settled upon multiple claimants exceeds $300,000, any party may apply to any circuit court to apportion to each claimant his proper share of the total amount limited by subsection (1) of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims arising out of the occurrence.
/1967 c.627 4/
Note: See note under ORS 30.260.

30.275 Content of notice of claim; who may present claim; time of notice; time of action. (1) Every person who claims damages from a public body for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to the governing body of the public body within 45 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, and the amount of compensation or other relief demanded. Failure to state the amount of compensation or other relief demanded does not invalidate the notice; but, in such case, the claimant shall furnish full information regarding the nature and extent of the injuries and damages within 30 days after written demand by the public body.

(2) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

(3) No action shall be maintained unless such notice has been given and unless the action is commenced within one year after such notice. The time for giving such notice does not include the time, not exceeding 90 days, during which the person injured is incapacitated by the injury from giving the notice.
/1967 c.627 5/
Note: See note under ORS 30.260.

30.280 Insurance against liability; effect of insurance; payment of premiums. (1) The governing body of any public body may procure insurance against liability of the public body and its officers, employees and agents.

(2) Such insurance may include coverage for the claims specified in subsection (2) of ORS 30.265. The procurement of such insurance shall not be deemed a waiver of immunity.

(3) If the public body has authority to levy taxes, it may include in its levy an amount to pay the premium costs for such insurance.
/1967 c.627 6/
Note: See note under ORS 30.260.

30.285 Public body may indemnify public officers. (1) The governing body of any public may defend, save harmless and indemnify any of its officers, employees and agents, whether elective or appointive, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty.

(2) The provisions of subsection (1) of this section do not apply in case of malfeasance in office or willful or wanton neglect of duty.

(3) This section does not repeal or modify ORS 243.510 to 243.620.
/1967 c.627 7/
Note: See note under ORS 30.260.

30.290 Settlement of claims; approval of court if settlement more than $2,500. The governing body of any public body may, subject to the provisions of any contract of liability insurance existing, compromise, adjust and settle tort claims against the public body for damages under ORS 30.260 to 30.300 and may, subject to procedural requirements imposed by law or charter, appropriate money for the payment of amounts agreed upon. When the amount of settlement exceeds $2,500, the settlement shall not be effective until approved by the circuit court, unless such settlement is not to be paid from public funds.
/1967 c.627 8/
Note: See note under ORS 30.260.

30.295 Payment of judgment or settlement; remedies for nonpayment; tax levy for payment. When a judgment is entered against or a settlement is made by a public body for a claim within the scope of ORS 30.260 to 30.300, payment shall be made and the same remedies shall apply in case of nonpayment as in the case of other judgments or settlements against the public body. If the public body has the authority to levy taxes and the judgment or settlement is unpaid at the time of the annual tax levy, the governing body shall, if it finds that other funds are not available for payment of the judgment, levy a tax sufficient to pay the judgment or settlement and interest accruing thereon to the expected time of payment, subject to any levy for debt service and within any limits imposed by law.
/1967 c.627 9/
Note: See note under ORS 30.260

30.300 ORS 30.260 to 30.300 exclusive. ORS 30.260 to 30.300 is exclusive and supersedes all home rule charter provisions and conflicting laws and ordinances on the same subject.
/1967 c.627 11/
Note: See note under ORS 30.260.

APPENDIX E

UTAH GOVERNMENTAL "IMMUNITY" ACT

Chapter 30 - Governmental Immunity Act

Section	
63-30-1	Short title.
63-30-2	Definitions.
63-30-3	Immunity of governmental entities from suit.
63-30-4	Act provisions not construed as admission or denial of liability — Effect of waiver of immunity.
63-30-5	Waiver of immunity as to contractual obligation.
63-30-6	Waiver of immunity as to actions involving property.
63-30-7	Waiver of immunity for injury from negligent operation of motor vehicles—Exception.
63-30-8	Waiver of immunity for injury caused by defective, unsafe, or dangerous condition of highways, bridges, or other structures.
63-30-9	Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement—Exception.
63-30-10	Waiver of immunity for injury caused by negligent act or omission of employee—Exceptions.
63-30-11	Claim for injury—Claimant's petition for relief.
63-30-12	Claim against state or agency—Notice to attorney general and agency—Time for filing.
63-30-13	Claim against political subdivision—Time for filing ntoice—Claim against city or town for injury on highways, bridges, or other structures.
63-30-14	Claim for injury—Approval or denial by governmental entity or insurance carrier within ninety days.
63-30-15	Denial of claim for injury—Authority and time for filing action against governmental entity.
63-30-16	Jurisdiction of district courts over actions—Application of Rules of Civil Procedure.
63-30-17	Venue of actions.
63-30-18	Compromise and settlement of actions.
63-30-19	Undertaking required of plaintiff in action.
63-30-20	Judgment against governmental entity bars action against employee.
63-30-21	Claims by other governmental entities prohibited.
63-30-22	Exemplary or punitive damages prohibited—Governmental entity exempt from execution, attachment or garnishment.

63-30-23 Payment of claim or judgment against state—Presentment for payment.
63-30-24 Payment of claim or judgment against political subdivision—Procedure by governing body.
63-30-25 Payment of claim or judgment against political subdivision—Installment payments.
63-30-26 Reserve funds for payment of claims or purchase of insurance created by political subdivisions.
63-30-27 Tax levy by political subdivisions for payment of claims or judgments or insurance premiums.
63-30-28 Liability insurance—Purchase by governmental entity authorized.
63-30-29 Liability insurance—Required policy provisions.
63-30-30 Liability insurance—Provision for waiver of sovereign immunity defense and for payment by insurer required in policy.
63-30-31 Liability insurance—Construction of policy not in compliance with act.
63-30-32 Liability insurance—Purchase of policy from lowest and best bidder required.
63-30-33 Liability insurance—Insurance for employees authorized.
63-30-34 Liability insurance—Judgment or award over limits of insurance policy reduced.

63-30-1. Short title.—This act shall be known and may be cited as the "Utah Governmental Immunity Act."
History: I. 1965, ch. 139, 1.

Compiler's Note.
The effective date of this act id July 1, 1966.

Title of Act.
An act relating to the immunity of the state, its agencies and political subdivision from actions at law, providing for exemption thereto, for the purchase of liability insurance, and for the payment of claims and judgments.

63-30-2. Definitions.—As used in this act:

(1) The word "state" shall mean the state of Utah or any office, department, agency, authority, commission, board. institution, hospital, college, university or other instrumentality thereof;

(2) The words "political subdivision" shall mean any county, city, town, school district, special improvement or taxing district, or any other political subdivision or public corporation;

(3) The words "governmental entity" shall mean and include the state and its political subdivisions as defined herein;

(4) The word "employee" shall mean and include any officer, employee or servant of a governmental entity;

(5) The word "claim" shall mean any claim brought against a governmental entity or its employee as permitted by this act;

(6) The word "injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a private person or his agent.

History: I. 1965, ch. 139, 2.

63-30-3. Immunity of governmental entities from suit.—Except as may be otherwise provided in this act, all governmental entities shall be immune from suit for any injury which may result from the activities of said entities wherein said entity is engaged in the exercise and discharge of a governmental function.

History: I. 1965, ch. 139 3.

63-30-4. Act provisions not construed as admission or denial of liability—Effect of waiver of immunity.—Nothing contained in this act, unless specifically provided, is to be construed as an admission or denial of liability or responsibility in so far as governmental entities are concerned. Wherein immunity from suit is waived by this act, consent to be sued is granted and liability of the entity shall be determined as if the entity were a private person.

History: I. 1965, ch. 139, 4.

63-30-5. Waiver of immunity as to contractual obligation.—Immunity from suit of all governmental entities is waived as to any contractual obligation.

History: I. 1965, ch. 139 5.

63-30-6. Waiver of immunity as to actions involving property.—Immunity from suit of all governmental entitles is waived for the recovery of any property real or personal or for the possession thereof or to quiet title thereto, or to foreclose mortgages or other liens thereon or to determine any adverse claim thereon, or secure any adjudication touching any mortgage or other lien said entity may have or claim on the property involved.

History: I. 1965, ch. 139 6.

63-30-7. Waiver of immunity for injury from negligent operation of motor vehicles—Exception.—Immunity from suit of all governmental entities is waived for injury resulting from the negligent operation by any employee of a motor vehicle or other equipment while in the scope of his employment; provided, however, that this section shall not apply to the operation of emergency vehicles as defined by law and while being driven in accordance with the requirements of section 41-6-14, Utah Code Annotated 1958, as amended by chapter 86, Laws of Utah, 1961.

History: I. 1965, ch. 139, 7.

Compiler's Note. Section 41-6-14 referred to in this section was amended by Laws 1965, ch. 86 1.

63-30-8. Waiver of immunity for injury caused by defective, unsafe, or dangerous condition of highways, bridges, or other structures.—Immunity from suit of all governmental entities is waived for any injury caused by a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct or other structure located thereon.

History: I. 1965, ch. 139 8.

63-30-9. Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement—Exception.—Immunity from suit of all governmental entities is waived for any injury caused from a dangerous or defective condition of any public building, structure, dam, reservoir or other public improvement. Immunity is not waived for latent defective conditions.

History: I. 1965, ch. 139, 9.

63-30-10. Waiver of immunity for injury caused by negligent act or omission of employee—Exceptions.—Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of his employment except if the injury:

(1) arises out of the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused, or

(2) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of rights of privacy, or civil rights, or

(3) arises out of the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval order, or similar authorization, or

(4) arises out of a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property, or

(5) arises out of the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause, or

(6) arises out of a misrepresentation by said employee whether or not such is negligent or intentional, or

(7) arises out of or results from riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances, or

(8) arises out of or in connection with the collection of and assessment of taxes, or

(9) arises out of the activities of the Utah National Guard, or

(10) arises out of the incarceration of any person in any state prison, county or city jail or other place of legal confinement, or

(11) arises from any natural condition on state lands or the result of any activity authorized by the state land board.

History: I. 1965, ch. 139, 10.

63-30-11. Claim for injury—Claimant's petition for relief.—Any person having a claim for injury to person or property against a governmental entity or its employee may petition said entity for any appropriate relief including the award of money damages.

History: I. 1965, ch. 139, 11.

63-30-12. Claim against state or agency—Notice to attorney general and agency—Time for filing.—A claim against the state or any agency thereof as defined herein shall be forever barred unless notice thereof is filed with the attorney general of the state of Utah and the agency concerned within one year after the cause of action arises.

History: I. 1965, ch. 139, 12.

Cross-References.
Mailing claims to state or political subdivisions, 63-37-1 et seq.

63-30-13. Claim against political subdivision—Time for filing notice—Claim against city or town for injury on highways, bridges, or other structures.—A claim against a political subdivision shall be forever barred unless notice thereof is filed within ninety days after the cause of action arises; provided, however, that any claim filed against a city or incorporated town under section 63-30-8 shall be governed by the provisions of section 10-7-77, Utah Code Annotated, 1953.

History: I. 1965, ch. 139, 13.

Compiler's Note.
The reference in this section to "section 63-30-8" appeared in the act as "section 8."

Cross-References.
Mailing claims to state or political subdivisions, 63-37-1 eq seq.

63-30-14. Claim for injury—Approval or denial by governmental entity or insurance carrier within ninety days.—Within ninety days of the filing of a claim the governmental entity or its insurance carrier shall act thereon and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of the ninety-day period the governmental entity or its insurance carrier has failed to approve or deny the claim.

History: I. 1965, ch. 139, 14.

63-30-15. Denial of claim for injury— Authority and time for filing action against governmental entity.—If the claim is denied, a claimant may institute an action in the district court against the governmental entity in those circumstances where immunity from suit has been waived as in this act provided. Said action must be commenced within one year after denial or the denial period as specified herein.

History: I. 1965, ch. 139, 15.

63-30-16. Jurisdiction of district courts over actions—Application of Rules of Civil Procedure.—The district courts shall have exclusive original jurisdiction over any action brought under this act and such actions shall be governed by the Utah Rules of Civil Procedure in so far as they are consistent with this act.

History: I. 1965, ch. 139, 16.

63-30-17. Venue of actions.—Actions against the state may be brought in the county in which the cause of action arose or in Salt Lake County. Actions against a county may be brought in the county in which the cause of action arose, or in the defendant county, or, upon leave granted by a district court judge of the defendant county, in any county contiguous to the defendant county. Said leave may be granted ex parte. Actions against all other political subdivisions including cities and towns, shall be brought in the county in which said political subdivision is located or in the county in which the cause of action arose.

History: I. 1965, ch. 139 17.

63-30-18. Compromise and settlement of actions.—The governmental entity, after conferring with its legal officer or other legal counsel if it has no such officer, may compromise and settle any action as to the damages or other relief sought.

History: I. 1965, ch. 139, 18.

63-30-19. Undertaking required of plaintiff in action.—At the time of filing the action the plaintiff shall file an undertaking in a sum fixed by the court, but in no case less than the sum of $300, conditioned upon payment by the plaintiff of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment.

History: I. 1965, ch. 139, 19.

63-30-20. Judgment against governmental entity bars action against employee.—Judgment against a governmental entity in an action brought under this act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim.

History: I. 1965, ch. 139, 20.

63-30-31. Claims by other governmental entities prohibited.—Notwithstanding any other provision of this act, no claim hereunder shall be brought by the United States or by any other state, territory, nation or governmental entity.

History: I. 1965, ch. 139, 21.

63-30-22. Exemplary or punitive damages prohibited—Governmental entity exempt from execution, attachment or garnishment.—No judgment shall be rendered against the governmental entity for exemplary or punitive damages; nor shall execution, attachment or garnishment issue against the governmental entity.

History: I. 1965, ch. 139, 22.

63-30-23. Payment of claim or judgment against state—Presentment for payments.—Any claim approved by the state

as defined herein or any final judgment obtained against the state shall be presented to the office, agency, institution or other instrumentality involved for payment if payment by said instrumentality is otherwise permitted by law. If such payment is not authorized by law then said judgment or claim shall be presented to the board of examiners and the board shall proceed as provided in section 63-6-10, Utah Code Annotated, 1953.

History: I. 1965, ch. 139, 23.

63-30-24. Payment of claim or judgment against political subdivision—Procedure by governing body.—Any claim approved by a political subdivision or any final judgment obtained against a political subdivision shall be submitted to the governing body thereof to be paid forthwith from the general funds of said political subdivision unless said funds are appropriated to some other use or restricted by law or contract for other purposes.

History: I. 1965, ch. 139, 24.

63-30-25. Payment of claim or judgment against political subdivision—Installment payments.—If the subdivision is unable to pay the claim or award during the current fiscal year it may pay the claim or award in not more than ten ensuing annual installments of equal size or in such other installments as are agreeable to the claimant.

History: I. 1965, ch. 139, 25.

63-30-26. Reserve funds for payment of claims or purchase of insurance created by political subdivisions.—Any political subdivision may create and maintain a reserve fund or may jointly with one or more other political subdivisions make contributions to a joint reserve fund, for the purpose of making payment of claims against the co-operating subdivisions when they become payable pursuant to this act, or for the purpose of purchasing liability insurance to protect the co-operating subdivisions from any or all risks created by this act.

History: I. 1965, ch. 139, 26.

63-30-27. Tax levy by political subdivisions for payment of claims or judgments or insurance premiums.—Notwithstanding any provision of law to the contrary all political subdivisions shall have authority to levy an annual property tax in the amount necessary to pay any claims, settlements or judgments accrued pursuant to the provisions hereof, or to pay the costs to defend against same, or for the purpose of establishing and maintaining a reserve fund for the payment of such claims,

settlements or judgments as may be reasonably anticipated, or to pay the premium for such insurance as herein authorized, even though as a result of such levy, the maximum levy as otherwise restricted by law is exceeded thereby; provided, that in no event shall such levy exceed one-half mill nor shall the revenues derived therefrom be used for any other purpose than those stipulated herein.

History: I. 1965, ch. 139, 27.

63-30-28. Liability insurance—Purchase by governmental entity authorized.—Any governmental entity within the state of Utah may purchase insurance against any risk which may arise as a result of the application of this act.

History: I. 1965, ch. 139, 28.

63-30-29. Liability insurance—Required policy provisions.—Every policy or contract of insurance purchased by a governmental entity as permitted under the provisions of this chapter shall provide:

(a) In respect to bodily injury liability that the insurance carrier shall carry on behalf of the insured governmental entity all sums which the insured should in the absence of the defense of governmental immunity be legally obligated to pay as damages because of bodily injury, sickness or disease, including death resulting therefrom, sustained by any person, caused by accident, and arising out of the ownership, maintenance and use of automobiles, or arising out of the ownership, maintenance or use of premises, and all operations necessary or incidental thereto, or in respect to other operations and caused by accident subject to a limit, exclusive of interest and costs, of not less than $100,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to limit of not less than $300,000 because of bodily injury or death of two or more persons in any one accident.

Appendix F

Boys - Student Accident Rates by School Grade - 1967

The table below and on page 91 summarize the reports of more than 85,000 school jurisdiction accidents† which occurred during the 1965-66 school year. The figures in the tables are rates, which show the number of accidents per 100,000 student days. A rate of .10 in the TOTAL column only is equivalent

Location and Type	TOTAL	Kgn.	1-3 Gr.	4-6 Gr.	7-9 Gr.	10-12 Gr.	Days Lost per Inj.
Enrollment Reported (000)	*2,506*	*181*	*663*	*571*	*534*	*419*	
TOTAL School Jurisdiction	**12.60**	**6.67**	**6.68**	**9.86**	**18.67**	**24.22**	**1.07**
Shops and labs	.76	.15	*	.02	1.38	2.41	.65
Homemaking	*	0	*	*	.01	.01	0
Science	.06	0	*	.01	.09	.21	.54
Driving (practice)	*	0	0	0	*	.01	.07
Vocational, ind. arts	.57	.02	0	.01	1.08	1.76	.63
Agricultural	.02	.02	0	0	.03	.04	.85
Other labs	.02	.01	0	*	.02	.07	.33
Other shops	.09	.10	0	*	.15	.31	1.04
Building – general	1.92	2.08	1.42	1.62	2.08	2.43	.86
Auditoriums and classrooms	.87	1.50	.84	.87	1.17	.76	.67
Lunchrooms	.12	.11	.06	.09	.20	.22	.96
Corridors	.35	.18	.17	.23	.70	.57	1.10
Lockers (room and corridor)	.08	.01	.01	.03	.17	.17	.65
Stairs and stairways (inside)	.24	.07	.09	.16	.48	.41	1.28
Toilets and washrooms	.14	.14	.20	.16	.12	.10	.90
Grounds–unorganized activities	2.36	2.04	3.04	4.19	1.97	.29	1.68
Apparatus	.38	.87	.72	.43	.21	.05	1.57
Ball playing	.81	.10	.57	1.78	.96	.19	1.03
Running	.54	.46	.87	.93	.30	.05	.95
Grounds – miscellaneous	.78	.76	.79	.88	1.01	.56	1.33
Fences and walls	.08	.08	.10	.10	.07	.04	1.29
Steps and walks (outside)	41	.34	.38	.37	.65	.38	1.34
Physical education	4.34	.56	.61	2.16	8.06	10.27	1.05
Apparatus	.33	.17	.11	.16	.67	.59	1.31
Class games	.21	.14	.15	.27	.29	.26	.92
Baseball—hard ball	.04	0	*	.03	.06	.10	.72
Baseball—soft ball	.34	.10	.04	.32	.66	.61	.85
Football—regular	.16	0	0	.03	.31	.50	1.12
Football—touch	.51	0	.01	.13	1.08	1.41	1.05
Basketball	.81	.04	.01	.14	1.48	2.63	.98
Hockey	.02	0	*	.01	.02	.05	.45
Soccer	.20	.01	.02	.14	.42	.45	1.17
Track and field events	.31	0	.02	.12	.84	.60	1.31
Volleyball and similar games	.21	.01	.01	.10	.41	.52	1.20
Other organized games	.43	.05	.14	.41	.76	.72	.93
Swimming	.09	0	*	.01	.15	.32	.67
Showers and dressing rooms	14	0	*	.02	.39	.29	.87
Intra-mural sports	.30	0	.01	.10	.56	.92	.90
Baseball—hard ball	*	0	0	.01	*	.02	.80
Baseball—soft ball	.03	0	*	.02	.05	.05	.84
Football—regular	.11	0	0	.02	.15	.44	.64
Football—touch	.04	0	0	.01	.13	.08	1.32
Basketball	.07	0	*	.02	.13	.18	.78
Inter-scholastic sports	1.38	0	*	.03	1.19	6.53	.84
Baseball—hard ball	.05	0	0	*	.02	.28	1.20
Baseball—soft ball	.01	0	0	*	.01	.03	1.02
Football—regular	.92	0	*	.01	.77	4.40	.85
Basketball	.17	0	0	.01	.20	.71	.70
Track and field events	12	0	*	.01	.12	.57	.92
Special activities	.04	.01	.02	.05	.06	.09	.77
Trips or excursions	.02	.01	.01	.03	.03	.03	1.01
Student dramatics	*	0	*	*	*	.02	.55
Student concerts	*	0	0	*	*	*	.25
Going to and from school (MV)	.27	.58	.28	.29	.26	39	3.99
School bus	.04	.10	.04	.05	.07	.03	1.31
Public carrier (incl. bus)	.01	.01	.01	.01	.01	.01	3.00
Motor scooter	.02	.01	*	*	.03	.08	2.74
Other mot. veh.—pedestrian	.11	.35	.20	.07	.07	.05	6.87
Other mot. veh.—bicycle	.03	0	.01	.04	.05	.03	2.95
Other mot. veh.—other type	.06	.11	.02	.03	.03	.19	1.85
Going to, from school (not MV)	.45	.19	.51	.61	.51	.23	1.30
Bicycle—not mot. veh.	.06	.02	.04	.11	.11	.02	1.59
Other street and sidewalk	.26	.34	.34	.34	.26	.14	1.27

†Accidents are those requiring doctor's attention or causing one-half day's absence or more. See also footnotes on pages 91 and 92.

*Less than 0.005.

Girls - Student Accident Rates by School Grade - 1967

to about 4,000 accidents among the nation's male (or) female enrollment. The rates indicate principal accident types and locations within grade groups, for boys and girls separately. Since reporting is voluntary, the experience may not be representative of the national accident picture. See footnotes.

Location and Type	TOTAL	Kgn.	1-3 Gr.	4-6 Gr.	7-9 Gr.	10-12 Gr.	Days Lost per Inj.
Enrollment Reported (000)	*2,395*	*172*	*626*	*556*	*515*	*407*	
TOTAL School Jurisdiction	**6.34**	**3.93**	**4.01**	**6.56**	**9.35**	**8.64**	**1.15**
ops and labs	.14	.02	*	.01	.27	.27	.48
Homemaking	.06	.01	0	0	.17	.11	.38
Science	.04	0	*	*	.05	.13	.51
Driving (practice)	*	0	*	0	0	.01	1.33
Vocational, ind. arts	.02	0	0	.01	.02	.04	.26
Agricultural	*	0	0	0	0	*	.63
Other labs	.01	.01	0	*	.01	.05	.71
Other shops	.01	0	0	0	.02	.03	.72
Building – general	1.31	1.15	.82	1.15	2.05	1.83	1.04
Auditoriums and classrooms	.54	.67	.43	.55	.73	.57	.79
Lunchrooms	.09	.09	.05	.07	.12	.13	1.17
Corridors	.21	.09	.10	.16	.38	.35	1.15
Lockers (room and corridor)	.05	.01	.01	.02	.13	.10	.94
Stairs and stairways (inside)	.27	.06	.06	.18	.53	.54	1.46
Toilets and washrooms	.08	.11	.11	.10	.07	.06	1.27
Grounds–unorganized activities	1.25	1.37	1.77	2.96	.49	.15	1.11
Apparatus	.28	.75	.57	.39	.05	.04	1.35
Ball playing	.33	.02	.20	.99	.16	.03	1.03
Running	.29	.29	.47	.55	.09	.03	1.02
Grounds – miscellaneous	.42	.43	.42	.49	.46	.37	1.41
Fences and walls	.03	.03	.05	.04	.02	.01	1.01
Steps and walks (outside)	.27	.24	.21	.27	.35	.30	1.44
Physical education	2.59	.24	.36	1.79	5.34	4.98	.33
Apparatus	.24	.09	.10	.13	.39	.54	1.17
Class games	.20	.06	.10	.27	.30	.24	.71
Baseball—hard ball	.01	0	*	.01	.02	.01	.63
Baseball—soft ball	.22	0	.02	.19	.49	.39	.79
Football—regular	*	0	0	*	*	*	1.29
Football—touch	.03	0	0	.01	.07	.09	1.01
Basketball	.39	.01	*	.06	.93	1.04	.81
Hockey	.03	0	0	*	.03	.12	.53
Soccer	.13	0	.01	.14	.31	.15	.75
Track and field events	.15	0	.01	.11	.39	.20	.97
Volleyball and similar games	.35	0	.01	.14	.69	.87	.73
Other organized games	.37	.05	.13	.43	.57	.58	1.14
Swimming	.03	0	0	*	.07	.10	1.09
Showers and dressing rooms	.09	0	*	.02	.27	.16	1.10
Intra-mural sports	.06	0	*	.04	.11	.14	.96
Baseball—hard ball	*	0	0	*	*	*	1.00
Baseball—soft ball	.01	0	0	.01	.02	.01	1.34
Football—regular	*	0	0	0	*	*	0
Football—touch	*	0	0	0	0	.01	12.00
Basketball	.02	0	0	.01	.05	.06	.53
Inter-scholastic sports	.04	0	*	.01	.04	.14	.66
Baseball—hard ball	0	0	0	0	0	0	0
Baseball—soft ball	*	0	*	0	*	*	.58
Football—regular	*	0	0	0	.01	*	1.61
Basketball	.01	0	0	*	.01	.05	.60
Track and field events	.01	0	0	.01	.01	.01	.91
Special activities	.05	.01	.01	.04	.08	.12	1.24
Trips or excursions	.02	0	.01	.02	.04	.03	1.73
Student dramatics	.01	0	0	*	*	.02	.62
Student concerts	*	0	0	*	*	*	1.17
Going to and from school (MV)	.22	.41	.22	.13	.24	.37	4.26
School bus	.05	.06	.04	.04	.08	.07	1.12
Public carrier (incl. bus)	.01	.02	.01	.01	.02	.03	2.08
Motor scooter	*	.01	*	0	*	*	3.10
Other mot. veh.—pedestrian	.09	.27	.15	.06	.09	.05	7.23
Other mot. veh.—bicycle	.01	.01	*	.01	*	.01	17.00
Other mot. veh.—other type	.06	.04	.02	.01	.05	.21	2.25
Going to, from school (not MV)	.26	.30	.31	.34	.27	.17	1.38
Bicycle—not mot. veh.	.02	.01	.02	.05	.01	0	1.10
Other street and sidewalk	.17	.23	.21	.20	.19	.12	1.50

See also footnotes on pages 90 and 92.

Kindergarten rates adjusted for half day.

1966

Boys — Student Accident Rates by School Grade

The table below and on page 91 summarize the reports of nearly 73,000 school jurisdiction accidents† which occurred during the 1964-65 school year. The figures in the tables are rates, which show the number of accidents per 100,000 student days. A rate of .10 in the TOTAL column only is equivalent

Location and Type	TOTAL	Kgn.	1-3 Gr.	4-6 Gr.	7-9 Gr.	10-12 Gr.	Days Lost per Inj.
Enrollment Reported (000)	*2,244*	*174*	*571*	*481*	*451*	*364*	
TOTAL School Jurisdiction	**12.09**	**4.97**	**6.74**	**9.95**	**18.46**	**24.61**	**1.10**
Shops and labs	.74	.01	*	.02	1.37	2.51	.59
Homemaking	*	.01	0	*	*	.02	.86
Science	.06	0	0	*	.09	.25	.28
Driving (practice)	*	0	0	0	*	*	.50
Vocational, ind. arts	.56	0	0	.01	1.11	1.81	.62
Agricultural	.02	0	0	0	.03	.06	.92
Other labs	.02	0	0	.01	.02	.08	.50
Other shops	.08	0	*	*	.12	.29	.51
Building—general	1.67	1.47	1.27	1.49	2.83	2.18	.90
Auditoriums and classrooms	.77	1.15	.76	.84	1.08	.68	.68
Lunchrooms	.07	0	.03	.03	.14	.14	1.22
Corridors	.32	.15	.16	.20	.62	.58	1.03
Lockers (room and corridor)	.08	.01	.01	.04	.22	.16	.69
Stairs and stairways (inside)	.22	.06	.09	.15	.48	.40	1.43
Toilets and washrooms	.12	.08	.16	.15	.14	.10	.88
Grounds—unorganized activities	2.35	1.76	3.14	4.42	1.98	.59	1.15
Apparatus	.44	.82	.81	.54	.27	.16	1.62
Ball playing	.84	.15	.62	2.00	.93	.25	1.15
Running	.50	.29	.82	.94	.32	.05	.84
Grounds—miscellaneous	.80	.69	.85	.97	1.06	.66	1.30
Fences and walls	.08	.10	.12	.12	.06	.03	1.90
Steps and walks (outside)	.49	.31	.46	.52	.77	.50	1.34
Physical education	4.16	.19	.62	2.14	8.44	10.57	1.03
Apparatus	.34	.08	.09	.12	.70	.82	1.27
Class games	.19	.05	.17	.26	.26	.23	.87
Baseball—hard ball	.04	0	*	.03	.06	.10	.79
Baseball—soft ball	.34	0	.04	.31	.59	.76	.94
Football—regular	.20	0	*	.03	.39	.68	.68
Football—touch	.47	0	*	.11	1.03	1.36	1.15
Basketball	.78	0	*	.15	1.49	2.56	.91
Hockey	.02	0	*	.01	.03	.05	.25
Soccer	.18	0	.02	.14	.39	.38	1.09
Track and field events	.29	0	.01	.11	.77	.61	1.38
Volleyball and similar games	.19	0	.02	.10	.33	.53	.78
Other organized games	.44	.03	.18	.48	.74	.81	1.06
Swimming	.09	0	0	*	.19	.31	.88
Showers and dressing rooms	.13	0	*	.01	.36	.33	1.13
Intra-mural sports	.25	0	*	.06	.59	.69	1.06
Baseball—hard ball	*	0	0	0	.01	.01	2.14
Baseball—soft ball	.02	0	*	.01	.06	.02	1.29
Football—regular	.11	0	0	*	.19	.42	1.05
Football—touch	.04	0	*	.02	.12	.05	.97
Basketball	.04	0	0	.02	.11	.11	.89
Inter-scholastic sports	1.39	0	0	.04	1.34	6.71	.87
Baseball—hard ball	.06	0	0	*	.02	.32	1.50
Baseball—soft ball	.01	0	0	.01	.02	.02	.80
Football—regular	.99	0	0	.01	.89	4.89	.57
Basketball	.14	0	0	.01	.18	.61	.77
Track and field events	.11	0	0	.01	.14	.52	.75
Special activities	.03	.01	.01	.03	.05	.08	1.16
Trips or excursions	.02	.01	.01	.02	.02	.03	1.70
Student dramatics	*	0	0	0	.01	.01	.60
Student concerts	*	0	0	*	*	.01	.40
Going to and from school (MV)	.26	.47	.29	.19	.26	.38	4.23
School bus	.03	.03	.03	.03	.06	.02	.89
Public carrier (incl. bus)	.01	0	*	*	.01	.02	1.00
Motor scooter	.01	0	0	*	.02	.05	1.90
Other mot. veh.—pedestrian	.11	.38	.22	.08	.07	.05	6.12
Other mot. veh.—bicycle	.04	.02	.02	.05	.07	.05	4.55
Other mot. veh.—other type	.06	.04	.02	.03	.03	.19	2.13
Going to, from school (not MV)	.44	.37	.56	.59	.54	.24	1.60
Bicycle—not mot. veh	.07	.01	.05	.12	.14	.02	1.74
Other street and sidewalk	.27	.29	.37	.33	.29	.17	1.51

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†Accidents are those requiring doctor's attention or causing one-half day's absence or more. See also footnotes on pages 91 and 92.

*Less than 0.05.

210

Girls — Student Accident Rates by School Grade

1966

to about 8,000 accidents among the nation's total school enrollment. The rates indicate principal accident types and locations within grade groups, for boys and girls separately. Since reporting is voluntary, the experience may not be representative of the national accident picture. See footnotes.

Location and Type	TOTAL	Kgn.	1-3 Gr.	4-6 Gr.	7-9 Gr.	10-12 Gr.	Days Lost per Inj.
Enrollment Reported (000)	*2,177*	*172*	*546*	*471*	*438*	*357*	
TOTAL School Jurisdiction	**5.87**	**2.86**	**3.86**	**6.51**	**9.01**	**8.54**	**1.14**
Shops and labs	.13	0	*	.01	.26	.40	.50
Homemaking	.06	0	0	.01	.17	.12	.61
Science	.03	0	0	*	.04	.16	.39
Driving (practice)	*	0	0	0	*	.01	1.50
Vocational, ind. arts	.02	0	0	*	.03	.04	.48
Agricultural	*	0	0	0	0	*	.33
Other labs	.01	0	0	*	.01	.06	.23
Other shops	.01	0	*	*	.01	.01	.20
Building—general	**1.17**	**.82**	**.74**	**1.04**	**1.98**	**1.77**	**1.01**
Auditoriums and classrooms	.49	.60	.41	.50	.68	.62	.81
Lunchrooms	.05	.01	.02	.05	.08	.08	1.00
Corridors	.18	.07	.11	.14	.35	.26	1.07
Lockers (room and corridor)	.05	.01	*	.02	.16	.08	.74
Stairs and stairways (inside)	.26	.02	.06	.17	.52	.58	1.51
Toilets and washrooms	.08	.09	.10	.10	.10	.07	1.02
Grounds—unorganized activities	**1.18**	**1.13**	**1.78**	**2.57**	**.50**	**.09**	**1.19**
Apparatus	.30	.63	.63	.44	.04	.01	1.76
Ball playing	.32	.02	.20	1.06	.18	.02	.94
Running	.27	.21	.49	.50	.11	.02	.86
Grounds—miscellaneous	**.46**	**.25**	**.43**	**.57**	**.61**	**.46**	**1.31**
Fences and walls	.03	.03	.04	.04	.03	.01	1.29
Steps and walks (outside)	.31	.14	.26	.34	.46	,38	1.40
Physical education	**2.32**	**.13**	**.40**	**1.73**	**4.94**	**4.84**	**.91**
Apparatus	.20	.08	.08	.15	.35	.45	1.43
Class games	.18	.01	.12	.32	.25	.16	.79
Baseball—hard ball	.01	0	*	.01	.03	.01	.67
Baseball—soft ball	.20	.01	.01	.16	.47	.37	.75
Football—regular	*	0	0	0	*	*	0
Football—touch	.03	0	0	*	.08	.10	.75
Basketball	.38	0	*	.05	1.03	.96	.75
Hockey	.03	0	0	*	.03	.12	.68
Soccer	.11	0	.01	.11	.29	.17	.87
Track and field events	.11	0	.02	.11	.30	.15	1.20
Volleyball and similar games	.31	0	.01	.13	.51	.94	.85
Other organized games	.34	.02	.09	.44	.58	.56	1.07
Swimming	.04	0	*	.01	.09	.12	.66
Showers and dressing rooms	.08	0	*	.01	.24	.19	1.24
Intra-mural sports	**.06**	**0**	*****	**.02**	**.10**	**.18**	**1.07**
Baseball—hard ball	*	0	0	0	0	*	0
Baseball—soft ball	.01	0	0	*	.01	.04	1.06
Football—regular	*	0	0	0	*	0	2.50
Football—touch	.01	0	0	0	.01	.02	.33
Basketball	.02	0	0	*	.05	.06	.92
Inter-scholastic sports	**.02**	**0**	**0**	**.01**	**.04**	**.07**	**.94**
Baseball—hard ball	*	0	0	*	0	0	0
Baseball—soft ball	*	0	0	0	*	0	0
Football—regular	*	0	0	0	*	*	.31
Basketball	.01	0	0	0	.01	.02	.46
Track and field events	*	0	0	.01	.01	.01	.23
Special activities	**.05**	**.02**	**.02**	**.05**	**.07**	**.11**	**1.06**
Trips or excursions	.02	.01	.01	.03	.03	.03	1.39
Student dramatics	*	0	0	*	*	.01	.22
Student concerts	*	0	0	0	*	.02	1.00
Going to and from school (MV)	**.19**	**.24**	**.18**	**.10**	**.20**	**.38**	**3.18**
School bus	.03	.02	.04	.02	.06	.05	2.88
Public carrier (incl. bus)	.01	.02	*	.01	.02	.02	2.30
Motor scooter	0	0	0	0	0	0	0
Other mot. veh.—pedestrian	.07	.17	.12	.04	.06	.06	4.49
Other mot. veh.—bicycle	.01	.01	*	.01	.01	0	1.88
Other mot. veh.—other type	.07	.02	.02	.02	.05	.25	2.29
Going to, from school (not MV)	**.29**	**.27**	**.31**	**.41**	**.31**	**.24**	**1.63**
Bicycle—not mot. veh.	.02	.01	.02	.05	.02	0	1.88
Other street and sidewalk	.21	.21	.22	.28	.24	.18	1.69

See also footnotes on pages 90 and 92. **Kindergarten rates adjusted for half day.**

APPENDIX G

SAFETY CHECK LIST

Write corrective measures under questions that are answered "no"

School______________________ **YES** **NO**
#2

General Areas

1. **Are lavatories and locker areas free from damage and other hazards?** ___ ___

2. **Are floors free from slipping hazards?** ___ ___

3. **Are walls and ceilings free from broken plaster or cracks?** ___ ___

4. **Is all door and window hardware working properly?** ___ ___

5. **Are all hanging objects on proper hooks and away from doors?** ___ ___

6. **Are all windows and mirrors free from cracks, etc...?** ___ ___

7. **Are all aisles and walkways free from litter and obstructions?** ___ ___

8. **Are portable equipment and materials stored properly?** ___ ___

9. **Are all ladders free from cracks or checks and the rungs properly set?** ___ ___

10. **Are all switches and wall plugs properly covered?** ___ ___

11. **Is the use of extension cords kept to a minimum?** ___ ___

12. **Have all classroom teachers, custodians and other staff members had instruction and practice in using different types of fire extinguishers?** ___ ___

School________________________	YES	NO
13. Is a flameproofed blanket immediately and easily obtainable in kitchens, laboratories, and shops for use in case someone's clothes ignites?	___	___
14. Is the ironing board cover flameproofed?	___	___
15. Has organized safety instruction been given?	___	___
16. Is safety instruction continued during the year?	___	___
17. Do the surfaces of all floors assure good footing?	___	___
18. Are all floor areas in good condition?	___	___
19. Are all floor coverings firmly set?	___	___
20. Are toilet room fixtures in good repair?	___	___
21. Is the telephone number of the fire department posted near each telephone in the school?	___	___
22. Are inflammables such as oily rags kept in cans with self-closing lids?	___	___
23. Are inflammables kept in proper containers and the content marked on each label?	___	___
24. Are procedures to follow in leaving the building in an emergency posted?	___	___
25. Have procedures been set up for the removal of disabled pupils from the school in case of an emergency?	___	___
26. Do all sidewalks have rough-finished surfaces?	___	___
27. Do all extension ladders have nonskid safety shoes?	___	___
28. Does the school make available to teachers an up-to-date statement of policies regarding procedures to follow in case of accident or other emergencies?	___	___

School____________________________	YES	NO
29. Does the school secretary have training in First Aid?	___	___
30. Is a small First Aid kit kept in each classroom?	___	___
31. Are building exists kept free of storage material?	___	___
32. Is the inside of the school bus cleaned daily?	___	___
33. Are First Aid kits in busses inspected at intervals specified by the governing board of the school district?	___	___
34. Do approximately one-third of the staff members have training in first aid?	___	___
Shop Areas		
1. Is all power equipment in shops properly guarded and grounded?	___	___
2. Are all cleaning materials and flammables properly stored?	___	___
3. Are floor areas in school shop free of oil, grease, dirt, scrap materials, and rubbish?	___	___
4. Are shop machines equipped with safety guards for users?	___	___
5. Can power controls of machines be activated from the operator's position at the machine?	___	___
6. Are machine power controls so located that they are not likely to operate from accidental contact with objects or parts of the body?	___	___
7. Are shop materials stacked so that they do not create hazards?	___	___
8. Are all pressure tanks inspected at least once every two years?	___	___
9. Is an inspection tag posted on or near each tank?	___	___

School________________________________	YES	NO
Cafeteria Areas		
1. Are cafeterias free from slipping hazards?		
2. Do meat grinders have hoppers designed to protect the hands of operators and is there a wooden plunger?		
3. Are cutting knives of food choppers enclosed?		
4. Are floors free from obstructions (kitchen and lunchroom facilities)?		
Science Lab		
1. Are all chemicals in the science laboratory labeled correctly?		
2. Are lab solutions marked to show their content and strength?		
3. Are flammable materials in lab labeled and kept in special containers?		
4. Are poisonous and otherwise hazardous chemicals kept on hand stored in a locked cabinet?		
5. Are poisonous and hazardous chemicals used only under supervision of the instructor?		
6. Do students wear goggles or face shields while handling corrosives?		
7. Do students wear rubber gloves while handling corrosives?		
8. Does the label on each bottle containing poison carry the name of the ANTIDOTE?		
9. Is a "bubble fountain" available for washing eyes?		
10. Are fire extinguishers available in the laboratory?		
11. Are students instructed in the following:		
a. Techniques of pouring, heating, and handling materials?		

School____________________________	YES	NO
b. Mixing materials such as sulfuric acid and water?	___	___
c. Disposing of materials which should not be dumped in waste jars or sinks?	___	___
d. Handling of electrical equipment?	___	___

Play Areas

	YES	NO
1. Do playgrounds have separate areas for different age groups?	___	___
2. Are play areas free of surface irregularities?	___	___
3. Are play areas free of foot traffic?	___	___
4. Are fences free of sharp edges, holes or other damage?	___	___
5. Are low tree branches trimmed to eliminate a hazard?	___	___
6. Is the area free of debris?	___	___
7. Are debris cans covered?	___	___
8. Is playground equipment in good condition and free from hazard?	___	___
9. Is school site properly fenced where it borders on streets, railroad tracks, bluffs, or ravines?	___	___
10. Are playground surfaces free from loose pebbles?	___	___
11. Does a distance of at least 10 feet separate playing fields?	___	___
12. Are playground paved surfaces free from dust?	___	___
13. Are playground surfaces free from excess water?	___	___
14. Are bicycles kept in racks or sheds that are located where they do not block play areas?	___	___

School ______________________________ **YES** **NO**

Gymnasium, Swimming Pool, and Locker Rooms

1. Are gymnasium walls free from projections for at least 7 feet above the floor? ___ ___

2. Are drinking fountains, fire extinguishers, etc. recessed? ___ ___

3. Are bleachers structurally sound and of standard size? ___ ___

4. Are bleachers equipped with hand rails? ___ ___

5. Is there adequate end and side space between court lines and walls? ___ ___

6. Are basketball goals of the hanging type? ___ ___

7. Do all doors open outward and have panic bars? ___ ___

8. Is area free from glare from windown and skylights? ___ ___

9. Are windows shatter proof and protected by rigid screens? ___ ___

10. Are locker and shower room floors nonskid? ___ ___

11. Is the shower rooms properly drained? ___ ___

12. Is cross traffic between shower and dressing room eliminated? ___ ___

13. Are floors in dressing area clean and dry? ___ ___

14. Are heating units in dressing rooms enclosed? ___ ___

15. Are electric switches in the area grounded? ___ ___

16. Are light switches located at least five feet from the wash basins and showers? ___ ___

17. Are diving boards not more than three meters high? ___ ___

18. Are diving boards inspected daily for splinters and cracks? ___ ___

School ______________________

	YES	NO
19. Is water depth adequate for each diving board?	___	___
20. Are separate areas provided for swimming and diving?	___	___
21. Do swimming instructors hold valid American Red Cross Life Saving and Water Safety Certificates?	___	___
22. Are lifeguards on duty while the pool is being used for recreational swimming?	___	___
23. Are lifeguards on duty when the public is using the pool?	___	___
24. Are adequate rescue devices such as poles, life rings, etc. available?	___	___
25. Are underwater lights approved by the underwriters laboratory and installed according to provisions of the electrical code?	___	___
26. Is consumption of food and bottled drinks prohibited at pool side?	___	___
27. Is the pool tested several times daily to determine amounts of chlorine?	___	___
28. If there is not a four-foot clearance between court lines and walls in the gymnasium, are the walls padded?	___	___

____
Safety Inspector's Signature

____
Date

APPENDIX H

BODILY INJURY INSURANCE RATES

	1968					1960
State	**324s**	**335s**	**323s**	**336s**	**395s**	**324s**
Alabama	.11	.18	.09	.47	.31	.08
	.06	.07	.05	.27	.15	.03
Alaska	.10	.12	.08	.39		
Arizona	.19	.32	.15	.63	.38	.06
Arkansas	.09	.14	.07	.34	.14	.08
California	.25	.40	.18	.51	.86	.33
	.32	.51				.33
	.30	.49				.33
	.26	.42				.33
	.16	.27				.33
	.30	.48				.33
	.30	.48				.33
	.29	.47				.33
Colorado	.13	.17	.11	.47	.18	.08
	.09	.14	.07	.34	.15	.06
Connecticut	.55	.88	.44	1.50	.75	.48
	.27	.49	.22	.84		
	.50	.80	.40	1.50		
	.46	.74	.37	1.50		
	.51	.82	.41	1.50		
	.31	.50	.25	.84	.58	.30
	.55	.89	.44	1.90		
	.50	.80	.40	1.70		
Delaware	.08	.12	.07	.33	.28	.03
Dist. of Col.						
Florida	.18	.18	.17	.79	.42	.04
	.18	.18	.17	.63		.04
	.18	.18	.12	.55	.30	.04
Georgia	.11	.12	.09	.45	.22	.05
	.07	.07	.07	.37	.14	.03

Bodily Injury Insurance Rates (Continued)

	1968					1960
State	324s	335s	323s	336s	395s	324s
Hawaii	.09	.12	.07	.35		.03
Idaho	.08	.13	.07	.34	.11	.06
Illinois	.26	.35	.21	1.10	.52	.11
	.24	.35	.19	.97	.29	.11
	.25	.35	.20	1.00		.11
Indiana	.11	.18	.11	.45		.08
	.12	.19	.12	.48		.08
	.10	.16	.10	.41		.08
	.09	.15	.10	.38		.08
Iowa	.10	.12	.08	.38	.17	.05
Kansas	.11	.12	.08	.42	.19	.04
	.06	.09	.045	.23	.14	.04
Kentucky	.10	.14	.08	.42	.28	.06
	.06	.07	.049	.25	.13	.03
Louisiana	.21	.21	.20	.99	.45	.03
	.11	.17	.08	.42	.30	.03
Maine	.09	.12	.07	.37	.19	.05
Maryland	.11	.18	.09	.46	.27	.09
	.17	.28	.14	.69	.30	.17
	.14	.23	.12	.58		
Massachusetts	.07	.11	.05	.27	.34	.06
	.08	.13	.07	.33		
	.08	.13	.07	.33		
	.049	.08	.04	.23		
	.07	.11	.05	.27		
	.12	.20	.10	.49	.56	.20
	.11	.18	.09	.44		
	.07	.11	.05	.27		
Michigan	.12	.12	.12	.62	.30	.04
	.09	.09	.08	.42	.21	.03
Minnesota	.21	.33	.17	.85	.26	.17
	.20	.32	.16	.60	.19	.17
	.21	.33	.17	.60	.19	.17

Bodily Injury Insurance Rates (Continued)

	1968					1960
State	324s	335s	323s	336s	395s	324s
Mississippi	.08	.11	.07	.29	.17	.08
Missouri	.17	.27	.14	.67		
	.18	.27	.15	.74	.53	.13
	.13	.17	.11	.54	.25	.06
Montana	.10	.16	.08	.41	.17	.10
Nebraska	.036	.06	.036	.14	.32	.05
Nevada	.12	.20	.10	.49	.23	.12
New Hampshire	.21	.26	.17	.86	.43	.05
New Jersey	.16	.16	.12	.54	.93	.09
New Mexico	.06	.10	.046	.25	.16	.06
New York	.82	1.20	.33	1.20		
	1.30	1.90	.51	1.90	1.00	1.16
	.65	.97	.26	.97		
	.87	1.30	.35	1.30		
	.78	1.20	.31	1.20		
	.51	.76	.20	.76	.38	.70
	.72	1.10	.29	1.10		
	.65	.97	.26	.97		
	1.50	1.60	.58	1.60		
	1.00	.60	.40	1.50		
North Carolina	.048	.08	.04	.20	.12	.04
North Dakota	.06	.07				
Ohio	.13	.14	.13	.54		
	.14	.14	.14	.57		.09
	.09	.14	.09	.35		
	.09	.09	.09	.37		
	.09	.09	.09	.36		
	.06	.06	.06	.37		.04
	.06	.06	.06	.35		
Oklahoma	.10	.15	.10	.42		.10
	.14	.15	.14	.54		.10
	.08	.12	.08	.33		.10

Bodily Injury Insurance Rates (Continued)

	1968					1960
State	324s	335s	323s	336s	395s	324s
Oregon	.13	.21	.10	.51		.06
	.13	.21	.10	.48		.05
Pennsylvania	.14	.18	.18	.80		.11
	.13	.22	.11	.54		
	.11	.17	.09	.43		
	.13	.18	.10	.51		
	.06	.10	.048	.24		.05
	.12	.18	.10	.50		
	.08	.14	.07	.34		
	.08	.12	.06	.31		
	.10	.17	.08	.42		
Rhode Island	.12	.12	.10	.51		.05
	.10	.12	.08	.41		.05
	.10	.12	.08	.38		.05
South Carolina	.05	.07	.045	.21		.03
South Dakota	.07	.07	.05	.26		.03
Tennessee	.09	.09	.09	.58		.04
	.09	.09	.08	.40		.04
Texas	.09	.12	.07	.35		.05
	.07	.12	.06	.30		
	.08	.12	.06	.31		
	.09	.12	.07	.37		
	.05	.08	.041	.20		.04
	.06	.09	.044	.22		
Utah	.09	.14	.07	.35		.06
Vermont	.14	.14	.11	.55		.04
Virginia	.07	.07	.07	.40		.03
	.06	.07	.05	.26		.03
Washington	.07	.07	.06	.32		.03
	.06	.07	.048	.24		.03
Washington	.14	.22	.11	.55		.10
	.13	.20	.10	.50		.10

Bodily Injury Insurance Rates (Continued)

	1968					1960
State	324s	335s	323s	336s	395s	324s
West Virginia	.06	.06	.06	.26		.05
Wisconsin	.23	.35	.21	.87		.16
	.18	.26	.15	.75		
	.15	.24	.14	.59		
	.15	.24	.15	.59		.09
Wyoming	.044	.07	.036	.17		.06

APPENDIX I

SPECIFICATIONS FOR BIDDING COMBINED COMPREHENSIVE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE INCLUDING AUTOMOBILE-LIABILITY AND PROPERTY DAMAGE

A GUIDE

Adapted from a Form Developed by the
California Association of Public Schools
Business Officials

Insurance Research Committee - Southern Section

April 1963

Specifications
for
COMBINED COMPREHENSIVE BODILY INJURY AND PROPERTY DAMAGE LIABILITY POLICY INCLUDING AUTOMOBILE LIABILITY & PROPERTY DAMAGE
COVERING

____
Name of School District

____
Address

A. BID CONDITIONS

Proposals shall be made on a form therefore, obtained at the Business Office of the Board of Education (Trustees). Proposals shall be sealed and filed at the Business Office.

____
Street

________________ ________________
City State

by no later than ____________ on ______________
Time Date

and will be opened and read aloud at said place and time.

The board reserves the right to reject any and all bids, and to waive any informality on a bid.

B. NAME OF INSURED

Pursuant to requirement of Section 63, Chapter 30, Utah Code shall be

"THE_______________________________________SCHOOL DISTRICT OF

____________________________COUNTY, UTAH, THE________________
BOARD OF EDUCATION (TRUSTEES), INDIVIDUAL MEMBERS OF THE BOARD OF EDUCATION (TRUSTEES), EMPLOYEES OF THE DISTRICT, PERMISSIVE USERS OF OWNED, HIRED OR LEASED AUTOMOBILES, AND ALL OTHER BOARDS AND COMMITTEES CREATED BY THE BOARD OF EDUCATION OR DISTRICT, AND THE INDIVIDUAL MEMBERS OF SUCH BOARDS OR COMMITTEES, WHEN ACTING FOR OR ON BEHALF OF THE NAMED INSURED SCHOOL DISTRICT, AND THE ASSOCIATED STUDENT ORGANIZATIONS, BUT ONLY WHILE ENGAGED IN ACTIVITIES AUTHORIZED BY SCHOOL OFFICIALS AND SANCTIONED BY THE
____SCHOOL DISTRICT."

C. ACCEPTABLE COMPANIES

The insuring company must be acceptable to the Governing Board of the School District, and must be rated at_______________* or better according to the latest Best's Insurance Guide and Ket Ratings.
*Note: The Insurance Committee of California Association of School Business Officials rating of not less than A+AAA.

D. LIMITS OF LIABILITY

1. REQUIRED COVERAGE--Multiple Limits

The company's liability as respects any one occurrence involving Bodily Injury liability or Property Damage liability or any combination of Bodily Injury liability or Property Damage liability shall not exceed the following specific limits:

Bodily and Personal Injury: $100,000 each person
Bodily and Personal Injury: $300,000 each occurrence
Property Damage: $ 50,000 each occurrence

2. PERMISSIVE COVERAGE--Multiple Limits

Section 63-30-33 of Utah Code permits the purchase of insurance against the personal liability of the members of the Board of Education (Trustees) and the employees of the district for any act or omission performed in the line of official duty.

The company's liability as respects any one occurrence involving Bodily Injury liability or Property Damage liability or any combination of Bodily Injury liability or Property Damage liability shall not exceed the following specific limits.

Bodily and Personal Injury: $100,000 each person
Bodily and Personal Injury: $300,000 each occurrence
Property Damage: $ 50,000 each occurrence

It is recommended that if insurance against personal liability is purchased, as permitted by the Utah Code, that the same limits of coverage be established as for the required coverage. By utilization of uniform limits there can be no confusion as to limits where negligence is indicated.

E. COVERAGE REQUIRED

The policy shall provide not less than the coverage required by Section 63-30-29 of the Utah Code and any amendments thereto during the term of the policy.

(Section 63-30-33 of the Utah Code also provides that school districts may also insure against the personal liability of the members of the Board or any officer or employee of the district as an individual, for any act or omission performed in the line of official duty. Should the district desire this optional coverage, the paragraph head "Coverage Required" above should be expanded to include the permissive portion of Section 63-30-33 as well as the required portion.)

F. POLICY CONDITIONS

The policy issued under these specifications shall contain standard conditions and exclusions customarily included in comprehensive liability policies and consistent with the plan of insurance contemplated hereunder.

1. First Aid

The Insured's rights shall not be prejudiced under the policy should the Insured provide such immediate medical or surgical relief to injured persons as shall be imperative at the time of injury.

2. Claims Report

The company shall, upon request of the insured, forward to the insured written statements and reports of the status of any and all claims for damages made against the insured.

3. Cancellation

The policy may be cancelled -

(a) By the company upon written notice to the Governing Board of the School District, which notice shall specify the date upon which the cancellation is to be effective and which date shall be not less than 30 days from the date such notice is received by said Board.

(b) By the Governing Board of the School District upon written notice to the Company, which notice shall specify the date upon which cancellation is to be effective.

If cancellation is made by the company, return of unearned premium shall be made to the School District on a pro-rata basis. If cancellation is made by the School District, return premium shall be made on the customary short rate basis.

G. POLICY PERIOD

The policy period shall be from 12:01 a.m.________________________
(month, day, year)

to 12:01 a.m.________________________Standard Time.
(month, day, year)

(Note: Policy may be purchased for a three or five year period.)

H. ACTUAL POLICY REQUIRED

The actual policy to be provided shall accompany each proposal with such endorsements as necessary to meet the requirements of these specifications. This policy need not be countersigned and will not become effective until written notice has been given by the district to the Company or its authorized representative.

I. MALPRACTICE

The policy shall provide coverage to the insured for errors or mistakes in professional services rendered by such persons as, but not limited to, doctors, nurses, masseurs, trainers. psychologists and physical therapists.

J. GENERAL INFORMATION SUBMITTED FOR PREMIUM COMPUTATION PURPOSES

For the benefit of the companies quoting, the following represents data regarding the sites, properties, activities and equipment to be included in the coverage of the policy:

1. Type Organization

(Include a statement here detailing how the District is organized - elementary, high school, etc.; - grade levels maintained; and, in what groupings grade levels are housed within the District.)

2. District-Owned Vehicles

Attached as Schedule "A" is a list of vehicles, showing passenger cars, commercial vehicles, buses and trailers now owned by the School District, and other information for the guidance of the bidders.

3. Employees As Of________________.
Date

Number of certificated employees - approximately________________
Number of classified employees - approximately________________
Total________________

4. **Automobile - Non-Ownership - Self Propelled or Trailers**

a. Class I (receiving direct remuneration from the District for the use of their cars).

There are approximately_______employees in Class I.

b. Class II (all employees or direct representatives not included in Class I).

There are approximately_______employees in Class II.

5. **Elevators and Hoists**

Location	Type and Power	Number	Total Rise; No. Landings	Name & Type Interlock	Name & Type Car Gate

(List if Applicable; if none, write "None")

6. **Bodily Injuries Other Than Automobiles**

a. Average Daily Attendance of Pupils - Attached as Schedule "B".

Occasionally other than school properties are used. It should be noted if reports are required by the insurance company.

b. Child Care Program (Age 2 through Kindergarten)

Nurseries -

(List if Applicable; if none, write "None")

Extended Day (1st through 6th grade)

c. Other Data Regarding______________________Schools
Name of District

(1) Number of seats in grandstands, bleachers, etc.

BY SCHOOL	OUTSIDE BLEACHERS		INSIDE BLEACHERS	
	Permanent	Portable	Permanent	Portable

(List if Applicable; if none, write "None")
(Show seating capacity of both Permanent and Portable Bleachers)

(2) Number of Swimming Pools

(List by location; if none, write "None")

(3) Other Facilities - Attached as Schedule "C"

d. Professional or Malpractice Exposure: (Activities of doctors and nurses confined to pupil examination by State Law.)

(1) Number of full time doctors __________ Part time __________
(2) Number of full time nurses __________
(3) Number of audiometrists __________
(4) Number of beds in first aid unit or infirmary: (except for cots in nurses' offices at schools and except for emergency stretchers in temporary first aid stations at schools) __________
(5) Number of beauty parlors __________
(6) Number of barber shops __________
(7) Number of clinics __________

7. Protective Liability

a. Contracts for construction, alterations, improvements, etc., provide that public liability, property damage and workmen's compensation insurance shall be carried by contractors.

We require bodily injury liability insurance limits of $________ per person, $________ per accident, and property damage liability limits of $________.

We anticipate the expenditure of approximately $________ for construction alterations, improvements, etc. during the next ______ months.

b. Contracts for pupil transportation (school buses and taxicabs) provide that public liability, property damage and workmen's compensation insurance shall be carried by contractors.

We require bodily injury liability insurance limits of $________ per person, $________ per accident, and property damage liability limits of $________.

We anticipate the expenditure of approximately $_________ on contracts for pupil transportation during the next ______ months.

8. Driver Training Courses

The School District conducts driver training courses. District-owned automobiles and rented automobiles are used in Driver Training.

9. Other Exposures

Other exposures which the District might want to include in its coverage, when applicable are: (1) Mountain Camps and Recreational Areas operated by the District whether owned or not; (2) Radio Stations or Television Stations owned and operated by the District; (3) Nursing Courses operated in cooperation with hospitals; (4) Beauty Operators Courses; (5) Aircraft Mechanics and Maintenance Classes; (6) Student Body Organization Business Activities; (7) Flight Schools; (8) Watercraft Operations.

K. LOSS EXPERIENCE

The successful bidder on this insurance coverage will be required to furnish annually a statement of loss experience except that the data for the first nine months of the third year shall be furnished within fifteen (15) days after the end of the ninth month. A complete report will be required for the entire period at the end of the third and final year of the policy and at the end of each year after expiration, if requested. The loss experience data is to be used as the Board of Education deems advisable.

The loss experience data must be furnished substantially in content and form as shown in the attached Schedule "D".

L. BUS TRANSPORTATION

(Make a statement giving details of District Policy on use of buses for transportation purposes other than transportation of pupils to and from school.)

M. ADDITIONAL INFORMATION

Inspections of the premises and operations are invited and any pertinent additional underwriting information will be provided upon request.

BID OR PROPOSAL FORM

COMBINED COMPREHENSIVE BODILY INJURY AND PROPERTY DAMAGE LIABILITY POLICY INCLUDING AUTOMOBILE LIABILITY AND PROPERTY DAMAGE PER SPECIFICATIONS DATED

____

To Cover

____

Name of School District

____

Street Address

____

City and State

____

Telephone

A. Type of Coverage

Combined Comprehensive Liability Policy as specified covering the entire liability of the ______________________ District of ______________________ County, its officers, and employees, as set forth in the specifications attached hereto.

B. Period

Thirty-six (36)* months, beginning on the ___ day of ______________________

12:01 a.m., and ending on the ___ day of ______________________

12:01 a.m., Standard Time.

*(NOTE: - The usual policy period is three (3) years.)

C. Time of Bid Opening

Bids or proposals must be sealed and filed in the - (insert name and address of office which is to receive the Bid or Proposal as well as the date on which Bids or Proposals are to be received and the latest time of receiving bids.)

BID OR PROPOSAL

The Honorable Board of Education

____
Name of District

____
Address

Gentlemen:

The undersigned hereby proposes and agrees to furnish a policy of insurance to include such coverage as is required and the optional coverages* under Section 63-30-29 to 33 of the Utah Code, for the period stated, and in the limits of liability stated, in the specifications entitled "Specifications for Combined Comprehensive Bodily Injury and Property Damage Liability Policy Including Automobile Liability and Property Damage covering__________________________

School District," dated________________________, 19____ issued in the

____
Name of Insurance Company

____
Street City State

The most recent Best's Insurance Guide rating for this Company is
*(NOTE: Delete if not required by specifications)

I. PREMIUM - Auditable, Adjustable

Annual Deposit Premium $________________________

Bidder must show detail of premium quoted, including A.D.A. rates, rates for each vehicle, and other exposures by attachment to this bid form.

II. ACTUAL COPY OF POLICY

Each bid shall be accompanied by an actual copy of the policy upon which the bid is based. It is important that this copy contain all the forms, including all endorsements which the bidder proposes to supply on the actual policy, as the breadth of coverage and minimum administrative burden will be considered of essence in making the award.

It is understood and agreed that the________________________________ Board of Education reserves the right to accept or reject any or all bids or proposals and to waive any informality in any bid or proposal received.

Name of Bidder________________________________
(type)

By (Signature)________________________________
Title

Address____________________________________
____
City

Dated this______ day of________________, 19___. Telephone____________

(NOTE: The District may wish the bidder to furnish a bid bond or certified check to guarantee willingness to enter into contract. If so, such information should be included in specifications and bid form should provide for indicating amount of bid bond or certified check submitted with bid.)

NON-OWNERSHIP LIABILITY INSURANCE

Liability claims against school districts arise with some frequency from the use of non-ownership vehicles when operated by or for a school district, or when operated by persons for whose action the district is legally liable. Such liability may exist even when vehicles are used without the knowledge or consent of the district. Providing coverage against claims resulting from the use of non-ownership vehicles is an essential part of the insurance program.

Non-ownership liability insurance is excess coverage protecting only against losses over and above other collectible insurance. Protection is generally achieved by endorsement to the vehicular or comprehensive liability insurance policy, although it is also available by separate policy for districts not owning vehicles. In general, three types of endorsements are available.

Endorsement to the policy of the owner of the vehicle used in the course of school work wherein the school district is named as an additional insured provides limited protection. The chief disadvantages are that the coverage may result in an additional insurance cost to the owner, policy limits may be inadequate, and coverage is limited to specific vehicles.

Endorsement to the district's vehicular or comprehensive liability insurance policy wherein only named individuals are covered provides another means of securing limited protection. The obvious disadvantage is the naming of specific individuals.

Broad form endorsement to the district's vehicular or comprehensive liability insurance policy, covering all persons for whose actions the district may be held legally liable, provides the greatest measure of protection, is simple to administer, and is relatively low in cost.

INSURANCE OF STAFF AGAINST LIABILITY IN THE ADMINISTRATION OF CORPORAL PUNISHMENT

If school personnel are to be covered against liability in the administration of corporal punishment this should be noted in the specifications as excess coverage since such coverage is normally excluded.